Vol. III

TRANSCRIPT OF RECORD

268
11

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 671

CLYDE H. FINLEY, RECEIVER, AND CORONADO COAL COMPANY, DENMAN COAL COMPANY, ET AL., PLAINTIFFS IN ERROR,

vs.

UNITED MINE WORKERS OF AMERICA, P. R. STEWART, FRED HOLT, ET AL., ETC., ET AL.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

FILED SEPTEMBER 26, 1924

(30,636)

(30,636)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 671

CLYDE H. FINLEY, RECEIVER, AND CORONADO COAL COMPANY, DENMAN COAL COMPANY, ET AL., PLAINTIFFS IN ERROR,

vs.

UNITED MINE WORKERS OF AMERICA, P. R. STEWART, FRED HOLT, ET AL., ETC., ET AL.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

VOLUME III

INDEX

	Page
Plaintiffs' Exhibit No. 103—Contract between Cherokee Construction Co. and Mammoth Vein Coal Co., June 26, 1909	1610
Plaintiffs' Exhibit No. 104—Contract of lease between Mrs. Belle McEachin et al. and Missouri Coal Company, May 1, 1907	1611
Plaintiffs' Exhibit No. 120—Contract of lease between Mammoth Vein Coal Company and Prairie Creek Coal Mining Company, March 27, 1911	1618
Plaintiffs' Exhibit No. 121—Contract of lease between the Kali-Inla Coal Company and Mammoth Vein Coal Company, January 1, 1912	1620
Plaintiffs' Exhibit No. 123—Contract of lease between the Kali-Inla Coal Company and Mammoth Vein Coal Company, November 30, 1910	1621

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 20, 1924

F 43031

Page

Plaintiffs' Exhibit No. 122—Assignment of contract of March 27, 1911, between Mammoth Vein Coal Company and Prairie Creek Coal Company to Kali-Inla Coal Company..... 1622
Plaintiffs' Exhibit No. 124—Contract of lease between Denman Coal Company and Mammoth Vein Coal Company, October 5, 1910 1623
Plaintiffs' Exhibit No. 108—Contract of lease between T. W. M. Boone and wife to Prairie Creek Coal Company, January 13, 1903 1624
Plaintiffs' Exhibit No. 112—Agreement between Sebastian County Coal Co. and Franklin Bache, January 1, 1907..... 1630
Plaintiffs' Exhibit No. 109—Assignment of contract of lease between T. W. M. Boone and wife and the Prairie Creek Coal Company to Sebastian County Coal Company, November 22, 1905 1639
Plaintiffs' Exhibit No. 113—Contract of lease between Arkansas Coal and Mining Company and Coronado Coal Company, December 23, 1913..... 1641
Plaintiffs' Exhibit No. 124—Contract between Arkansas Coal and Mining Company, Smokeless Fuel Company, and Coronado Coal Company, December 23, 1913..... 1642
Plaintiffs' Exhibit No. 125—Contract of lease between Denman Coal Company and Coronado Coal Company, October 5, 1910. 1646
Plaintiffs' Exhibit No. 126—Contract of lease between Denman Coal Company and Coronado Coal Company, March 27, 1911. 1647
Plaintiffs' Exhibit No. 127—Contract of lease between Mammoth Vein Coal Company and Coronado Coal Company, January 3, 1910..... 1649
Plaintiffs' Exhibit No. 128—Contract of lease between Coronado Coal Company and Hartford Coal Company, January 3, 1910. 1650
Plaintiffs' Exhibit No. 100—Contract of lease between American Smokeless Coal Company et al. and Mammoth Vein Coal Mining Company, July 10, 1905..... 1650
Plaintiffs' Exhibit No. 101—Supplemental contract of lease between Cherokee Construction Company and Mammoth Vein Coal Mining Company, June 19, 1909..... 1662
Plaintiffs' Exhibit No. 107—Contract of lease between Cherokee Construction Company and Prairie Creek Coal Mining Company, December 19, 1906..... 1663
Defendants' Exhibit 15—Inventory of equipment at mines 3 and 4 leased to the Prairie Creek Coal Mining Company by the Cherokee Construction Company, January 1, 1907..... 1672
Plaintiffs' Exhibit No. 105—Contract of lease between Cherokee Construction Company and Prairie Creek Coal Mining Company, July 1, 1909..... 1686
Plaintiffs' Exhibit No. 129—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, December 1, 1911..... 1692
Plaintiffs' Exhibit No. 130—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, July 31, 1911..... 1693

Page

Plaintiffs' Exhibit No. 131—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, February 1, 1913 1694

Plaintiffs' Exhibit No. 132—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, May 31, 1911 1695

Plaintiffs' Exhibit No. 133—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, December 1, 1912 1697

Plaintiffs' Exhibit No. 134—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, February 1, 1914 1698

Plaintiffs' Exhibit No. 135—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, August 31, 1911 1699

Plaintiffs' Exhibit No. 136—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, January 1, 1911 1701

Plaintiffs' Exhibit No. 137—Contract of lease between Mammoth Vein Coal Company and Prairie Creek Coal Mining Company, March 27, 1911 1702

Plaintiffs' Exhibit No. 138—Assignment of contract of lease between Mammoth Vein Coal Company and Prairie Creek Coal Mining Company to Kali-Inla Coal Company, August 2, 1911. 1703

Plaintiffs' Exhibit No. 139—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, March 27, 1911 1704

Plaintiffs' Exhibit No. 140—Supplements to contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, April 15, 1911 1705

Plaintiffs' Exhibit No. 141—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, February 28, 1914 1705

Plaintiffs' Exhibit No. 142—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, November 30, 1913 1707

Plaintiffs' Exhibit No. 143—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, September 30, 1913 1708

Plaintiffs' Exhibit No. 144—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, January 31, 1914 1709

Plaintiffs' Exhibit No. 145—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, March 31, 1913 1710

Plaintiffs' Exhibit No. 146—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, November 30, 1913 1712

Plaintiffs' Exhibit No. 147—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, December 31, 1913 1713

Page

Plaintiffs' Exhibit No. 148—Contract of lease between Kali-Inla Coal Company and Prairie Creek Coal Mining Company, September 30, 1913 1714

Plaintiffs' Exhibit No. 149—Contract of lease between Hartford Coal Company and Prairie Creek Coal Mining Company, January 1, 1913 1716

Plaintiffs' Exhibit No. 150—Contract of lease between Mammoth Vein Coal Company and Prairie Creek Coal Mining Company, March 27, 1911 1717

Plaintiffs' Exhibit No. 151—Agreement between Prairie Creek Coal Mining Company and Mammoth Vein Coal Mining Company, July 7, 1914 1718

Contract between Prairie Creek Coal Mining Company and Mammoth Vein Coal Mining Company, March 23, 1914 .. 1719

Plaintiffs' Exhibit No. 152—Contract between Sebastian County Coal and Mining Company and Prairie Creek Coal Mining Company, August, 1913 1720

Plaintiffs' Exhibit No. 154—Contract of lease between Franklin Bache and Hartford Coal Company, November 20, 1913 1724

Contract of lease between receivers of Bolen-Darnall Coal Company and Franklin Bache, November 19, 1913 1726

Plaintiffs' Exhibit No. 153—Contract of lease between Mammoth Vein Coal Mining Company and Hartford Coal Company, June 22, 1914 1730

Plaintiffs' Exhibit No. 155—Contract of lease between Denman Coal Company and Hartford Coal Company, December 1, 1910 1738

Plaintiffs' Exhibit No. 115—Agreement between Mammoth Vein Coal Company and Mammoth Vein Coal Mining Company, July 7, 1914 1740

Contract between Mammoth Vein Coal Company and Mammoth Vein Coal Mining Company, March 23, 1914 1740

Plaintiffs' Exhibit No. 116—Contract of lease between Kali-Inla Coal Company and Mammoth Vein Coal Company, February 14, 1914 1742

Plaintiffs' Exhibit No. 117—Contract of lease between Denman Coal Company and Mammoth Vein Coal Company, December 5, 1911 1744

Plaintiffs' Exhibit No. 118—Contract of lease between Denman Coal Company and Mammoth Vein Coal Company, October 5, 1910 1745

Plaintiffs' Exhibit No. 119—Contract of lease between Denman Coal Company and Mammoth Vein Coal Company, January 15, 1914 1746

Plaintiffs' Exhibit No. 157—Agreement between receivers for Mammoth Vein Coal Company et al. and W. H. Mieilmier, October 19, 1917 1748

Contract of lease between receivers of Mammoth Vein Coal Company et al. and W. H. Meillmier, June 28, 1917 1748

Bond on contract 1751

Page

Plaintiffs' Exhibit No. 110—Assignment of contract of lease between T. W. M. Boone and wife and Prairie Creek Coal Company and Joseph M. Spradling, October 30, 1905..... 1752
Plaintiffs' Exhibit No. 111—Deed of release as to Boone lease by Cherokee Construction Company, October 30, 1905..... 1755
Plaintiffs' Exhibit No. 158—Contract of lease between Mammoth Vein Coal Company and Coronado Coal Company, January 3, 1910..... 1757
Plaintiffs' Exhibit No. 114—Contract of lease between Mammoth Vein Royalty Company and Mammoth Vein Coal Company, October 1, 1904..... 1758
Contract between Mammoth Vein Coal Company and Midland Valley Railroad Company, April 18, 1904..... 1766
Plaintiffs' Exhibit No. 172—Decree in the case of Coronado Coal Company et al. vs. Sebastian County Coal Mining Company et al..... 1767
Plaintiffs' Exhibit No. 173—Decree in the case of Coronado Coal Company et al. vs. Sebastian County Coal Company et al..... 1771
Testimony of Carl Scholz..... 1775
Plaintiffs' Exhibit—Map of Missouri and Oklahoma coal fields..... 1793
Testimony of M. A. Roberts..... 1820
W. R. Eustice..... 1824
Dr. Neill..... 1826
H. L. Good..... 1830
Ballard S. Carney..... 1849
Charles Dalton..... 1901
John Shalun..... 1904
C. H. Finley (recalled)..... 1906
Wm. J. Clinton..... 1917
Plaintiffs' Exhibit A—Receipt of express company for package from Remington Arms Union Metallic Cartridge Company to be sent to John Mastell..... 1919
Plaintiffs' Exhibit B—Receipt of express company for package from Remington Arms Union Metallic Cartridge Company to be sent to Oscar Layton..... 1919
Testimony of John J. Morris..... 1919
Plaintiffs' Exhibit C—Receipt of express company for package from Remington Arms Union Metallic Cartridge Company to be sent to Oscar Layton..... 1920
Testimony of Thurman Looper..... 1920
Plaintiffs' Exhibit 177—Voucher drawn by A. G. McGraw on United Mine Workers of America, Local Union No. 1565, $2.00, October 2, 1917..... 1922
Plaintiffs' Exhibit 178—Voucher drawn by A. G. McGraw on United Mine Workers of America, Local Union No. 1565, $2.00, October 2, 1917..... 1923
Testimony of Franklin Bache (recalled)..... 1923
Walter Gilman..... 1927

	Page
Testimony of R. M. Eyster	1934
Franklin Bache (recalled)	1937
Walter Gilman (recalled)	1939
Franklin Bache (recalled)	1953
William Green	1955
Elsidore McColloch	1957
Francis Feehan	1961
W. D. Ryan	1970
Harry N. Taylor	1971
George Westwood	1983
John S. Cameron	1990
Harry Bousfield	1999
W. L. A. Johnson	2000
F. W. Lukens	2002
Minnie B. Poehler	2009
Rufus M. Hamilton	2010
Clarence Gean	2015
B. W. Howard	2018
Joe Claiborne	2019
W. H. Hall	2022
Charles McGown	2024
Isaac Witt	2028
Tip Sloan	2031
John Bumpus	2034
Harve Shafer	2037
Thomas Skidgel	2044
Cicero Phillips	2046
C. E. Valentine	2050
John W. Goolsby	2051
Mrs. Sarah Hobbs	2053
Mrs. Pearl Ashley	2054
Mrs. James Meeks	2055
Miss Addie Dunn	2057
Peter Graham	2059
Mrs. Peter Graham	2066
Ed Ables	2070
Peter Nickollo	2075
Whitney Harger	2077
W. J. Jenkins	2081
W. H. Coulter	2084
Miss Ella Howard	2088
Elberta Johnson	2092
Mrs. Pearl Berger	2099
Henzey Hollowess	2102
H. C. King	2106
John P. White	2107
John Wilkinson	2125
Mrs. Sam Dorman	2128
John W. Goolsby (recalled)	2131
Ruf E. Hamilton	2134

	Page
Testimony of C. E. Valentine	2132
Jess Redyard	2132
Mrs. John Bumpus	2133
G. W. Dunn	2137
Walter Dunn	2140
Mrs. George Hunter	2141
William McLachlan	2144
E. Marianelli	2167
P. L. Harrison	2169
Mrs. Charley Goodin	2171
Defendants' Exhibit 42—Photograph of house	2173
Testimony of Miss Connie Dowdy	2174
L. Schmidt	2175
Dr. D. D. Butler	2177
Will Miller	2179
Henry Wall	2182
Jim Ferguson	2185
Herman W. Jeffries	2187
Defendants' Exhibit No. 43—Constitution of the United Mine Workers, District No. 21	2189
Colloquy between court and counsel	2214
Testimony of S. T. Moore	2216
John S. Shallen	2219
T. A. Norris	2224
C. H. Finley	2226
Franklin Bache	2228
C. H. Finley (recalled)	2230
Court's charge to jury	2231
Defendants' motion for a directed verdict	2239
Verdict	2239
Order settling bill of exceptions	2240
Stipulation re bill of exceptions	2240
Petition for writ of error	2241
Assignment of errors	2243
Order allowing writ of error	2312
Bond on writ of error	2313
Præcipe for transcript of record	2314
Clerk's certificate	2315
Appearance of counsel	2316
Order continuing cause	2316
Argument and submission	2317
Opinion, Kenyon, J.	2317
Judgment	2325
Petition for and order allowing writ of error	2326
Assignment of errors	2327
Bond on writ of error	(omitted in printing) 2384
Writ of error and return	2384
Citation and service	(omitted in printing) 2386
Clerk's certificate	2386

On Ground

1 Crescent Iron Works, Shaker Engine.
1½ pint lubricator
8'-½" pipe — Steam line to shaker engine
47'-1½" pipe
95'-1½" pipe
2571 2-1¼" globe valves
2-1½" " "
1-1¼" Union
1-1¼" tee
1 reducer, 1½"x1¼"
2-1½" ells.
2-1½" tees.
1-1½" union
218'-12a# rail (old) boiler slack track
150'-12# (nearly new) repair track
1 Faibanks track scale, 42' long, abd weighs house 6'x10'
250 Signal wire with levers.

Boiler House

1 boiler house 28'x42'
2-Crescent Iron works boiler, 75 H. P. each, with fittings complete, for supply steam to hoisting enfine, fan, pumps shaker engine, and radiator.
2-60' stacks.
2 coal shovels
1 boiler slack car
1 how, 1 rake, 1 poker
1 iron wheelborrow
1 flue cleaner and ros.
1 whistle

One Mocking Bird Whistle cought byo Midland C. Coal Co. $25.00
1-2" Pemberthy injector #291635

Engine House

1 engine house 18' x 30'. Shingle roof
1 paid second motion Litchfield hoisting engines, size
2572 12"x20", with fittings complete for hoisting.
1-5' hoisting drum
1-9" signal bell
1-6" "
1-1 pint Detroit libricator.

1 Steam guage
1 copper oil can
1 small heating stove, and 6 joints pipe
1 telephone and line to M. V. R. R.
6 guage glasses ½"x12"
1-4" monkey wrench
2 pairs pipe tongs
2 safety lamps (Clammey and Davey)

Blacksmith Shop.

1 Blacksmith shop, 28' 6"x32'-6" Shingle roof
1 pit car (1 end and 1 side gone)
2 pit car axles
2 " " wheels (old)
2 engine templates (wood)

Fan House

1 fan house 14'x31'
1 fan complete, size 4'x18'
1 fan engine complete, including lubricator, and all connections necessary for tunning fan.

Oil House, etc., in Yard.

1 oil house 6' c 8". 1 tin oil pump.
1 mule shed 10'x40' shingle roof
1 frame powder house 6'x8' shingle roof
2573 1 corrugated iron powder house, 14x18
1 mule lot, 4 wires; size about 150'x150'
1 small pond
1 small upright boiler, including stack, 1 steam gauge and
1 injector (located James Fork Creed near Quinleys strip pit)
1 old wooden water tank.
86' 1¼" pipe (loose)
18' 2" " "

Let line, Boiler to Johnson Cr.

190'-1 pipe
235'-1¼" "
268' 1½" "
34' 2" "
1 Blakeslee jet, 2" suction, 1½" discharge.
4 1" unions
3½1¼" "
1-1½" "
4-1" "
7-1" "
1-1¼" "

1-1″ Globe valve
1-1″ angle globe valve
1-2″ union
1-2″ tee
1-2″ nipple
1-2″ plug
2 bushings 1″x2″
3 " 1½″x2″
2 " 1″x1¼″

Discharge Line, Air Shaft to Pond

2574 37′-2½″ pipe
140′-2″ "
1-2″ union
1-3″ plug
1-3″ nipple
1-3″ ell
1 bushings 2½″ a 2″
1 " 2″ x 3″
1 bowl reducer 2″ x 3″

Steam Lines to Fan, Pumps and Engine (outside)

368′-2 pipe
10′-1½″ "
50′-4″ "
1-1½″ x 2″ tee reducer
1-1½″ ell
1-1½″ nipple
1-1½″x1″ bowl reducer
1-1″ globe valve
2-2″ flange unions
6-2″ ells
1-2″ tee
1-2″ globe valve

Inside Air Shaft.

90′-2″ (discharge small pump)
105′ 1½″ (exhaust large pump)
108′ 3″ pipe (discharge to large pump)
90′-2″ (steam line to pumps)

2575 Water Line to James Fork Creek.

12951 2″ pipe

Inside.

1 Fairbanks Morse and Co. pump #3875, size 7 x 4½ x 10
1 " " " " #gone " 6 x 4 x 5

1 Worthington pump #126790, 152 x 152 size 6x4x6
1-lubricator ¼ pint
93′-3″ pipe (suction)
55′-3″ " (discharge)
117 1½″ pipe (steam and exhaust)
98′-2″ " (suction)
2″ " (steam)
1 bushings 1½″ x 2″
1 bowl reducer 4″ x 3″
1 nipple 4″
3 " 3″
3 " 2″
3 " 1½″
1 " 1″
2 flanges 3″
1 " 2″
3 ells 3″
2 " 2″
3 " 1½″
2 plugs 2″
2 tees 2″
1 tees 1½″
2 unions 2″
2 "2½″
2576 1 Unions 1″
1 globe valve 1½″
1 globe valve 1″
1 wooden reel (mounted) and about 20 yards of small copper wire
1 monkey wrench 18″
1 monkey wrench 16″
1 pair pipr tongs 18″
17125′—12# rail
79 frogs
76 switches
1 double cross-over switch
7 switxh rails
1 tie fork
1 crimper
1 spike maul
1 spike lifter
305′—2″ pipe
1 water car.

Pit Cars Inside and Outside.

51 pit cars in running order
3 pit cars badly broken
54 pit cars total

Tipple

1 slope tipple
1 bar screen 6 x 6
1 double cross-over switch
2 frogs and switches
140′ rock trestle
2577 710′—12# rail (old)
1 5′ sheave wheel
1 small hearing stove.
1 Fairbanks tipple scale
1 pair goose neck deump
1 test weight
1 old tornay oiler.

In Yard and Under Tipple.

63′—12# rail (loose) old
1 reel of old hoisting tope (good only for guy rope)
1 mile lot, about 100′ & 100′, 4 wires.
1 vise
1 iron chute (not in use)
1 smoke stack, 24″ diam., 28′ x 6″ long (not in use)

Engine House.

1 Pratt hoisting engine, complete for hoisting 7″ x 14″
1—3″ hoisting drum
300′ 5/8″ hoisting rope (3 years old)
1 lubricator
1—6″ signal bell

Blacksmith Shop

1 blacksmith shop 10′ x 12′
1 bellows (leaks)
0 forge (wood)
1 anvil
1 vise
1 cleaver
2578 2 hammers
1 pair tongs
1 pinch bar (point broken)

Boiler House

1 boiler house 22′ x 26′ shingle roof
1 Chandler and Taylor boiler and stack (24-2″ flues)
1 cresent locomotive style boiler and stack 60 H P 56—2″ flues
1 hoe
1 garden hoe
1 poker
1 iron wheelbarrow
1 Fairbanks Morse and Co. pump; #3829; size 3 x 2 x 4 (considerably rusted) no good

Fan House

1 fan house 14′ x 20′
1 fan 4′ x 12′
1 Ketcham horizontal fan engine.
1 rubber belt 9″ x 18′ (old)

Oil House

1 old house 8′ 6″ x 10′
1 patent Enterprise oil pump

Boilers and Engine Connections

25′—¾″ pipe
60′—1″ pipe
12′—1″ pipe
36′—1¼″ pipe
6½ ¾″ globe valves
2—1″ globe valves
2579 1—¾″ Globe valve
1½ ¾″ union. 5—¾″ ells
1 bushing ¾″ x 1″
4—1″ unions
1—1″ tees
2—1″ ells
v bushings ¾″ x 1″
1 bushing 1½″ x 1¼″
1 bushing 1¼ x 1″
3 bushings 2″ x 2½″
2 ells 1″
1 ell 2″
1 bowl reducer 2″ x 1½″
5 nipples 1″
5 nipples 2″
1 cross tee 2″
1 union 2″

1 globe valve 2½"
2 globe valves 2"
1 steam guage
1 whistle 2"
1 Garfield double jet

Pipe Lines to Drill Hole, Fan, Pond and Well and Fittings.

812'—2" pipe
482'—2" pipe
158'—1¼" pipe
120'—1" pipe
3 bushings 1½" x 2"
2 bushings 1½" x 1¼"
2580 1 bushing 2" x 3"
4 tees 2"
2 tees 1½"
5 ells 2"
5 ells 1½"
4 nipples 2"
4 nipples 1¼"
1 nipple 1½"
1 nipple 3"
1 union 2"
3 unions 1½"
1 globe valve 1½"
2 globe valves 2"
1 flange 1¼"
1 pond

Inside

11915'—12# rail (old)
58 frogs
53 switches
7 switch points
1—5" signal bell and 200' bell wire
1 Leckie upright hoisting engine, size about 6" x 12", friction geared, 18" iron drum and fitted complete, (for hoisting coal frpm Main West entry to Slope, in Mine No. 5) with steam and exhaust lines, valves etc. (steam connection to pipe line in drill hole).
1—½ pint lubricator, on engine.
2581 About 700' of 5/8" hoisting rope, on engine deum (rope deteriorated about 75% from original cost value)
1 iron track guage.

Pit Cars.

(Inside and Outside)

35 pit cars, in good order
13 pit cars needing repairs
48 pit cars total, at mine 5

Mine Equipment Stores at Midland

8 sets pit mule harness.
3 sinking picks
1 bellows (holes in leather)
4 tail chains
8 mule collars (for pit mules)
5 perforated screen sheets 4′ x 6′ (shaker screen fittings)
1 perforated screen sheet 2¢″ x 6′ (shaker screen fittings)
3 ½ air blacksmith tongs.
1 Smith igniting dynamo
1 Blackeslee citcle jet.

Office.

2 rooms (The north and West rooms) of The Cherokee Construction Co., office building located on the Midland Valley R. R. Right of way at Midland, Arkansas.

1 Stationery standing desk 24′ long, containing 2 cash drawers, 4 common drawers, shelving and (copboards).

1 movable standing desk 6′ x 2½′ fitted with 9 drawers, and 1 cupboard

1 movable cupboard 2′ x 4′ x 6′ fitted with shelves and
2582 pigeon holes.

1 table 3′ 6″ long
1 copying press 18″ x 22″
1 copying press table
1 wringer and tank
1 wash bowl and pitcher

1 iron combination safe, size outside 2′ 5″ deep x 3′ 4″ wide x 3′ 8″ high Manufactured by Harrigan Safe and Iron Works, Kansas City.

1 heating stove 5′ 6″ high with 7 joints of stove pipe.
1 heating stove 3′ 6″ high with 4 joints of stove pipe
3 office arm chairs
1 revolving arm chair
1 wash basin (granite iron)
1 dipper
1 slop bucket
1 cuspidor
1 telephone and connection line on M. V. R. R.
2 lamp brackets
1 galv. iron pay-envelope bos.

Dwelling Houses.

8—2 room houses Nos. Remarks
611
617—2 window lights broken
621—roof leaks, floor gone Good for lumber only
634—1 window light broken
643
644—5 window lights broken
645—2 window lights broken
464—1 window light broken
2583 28—2 room houses, Nos. Remarks
604
605
606—3 window lights broken
607—2 window lights broken
609
610—5 window lights broken
612—10 window lights broken
613—10 window lights broken
614—8 window lights broken
615—7 window lights broken
618—1 window light broken—1 door panel broken
619
622—1 window light broken
626
627—4 window lights broken
628—12 window lights broken
629—13 window lights broken—1 door panel broken
630—17 window lights broken
631—5 window lights broken
632—7 window lights broken
633—3 window lights broken
635—3 window lights broken
636—3 window lights broken
637—2 window lights broken—1 door panel broken
638—10 window lights broken
640—1 window light broken
2584 641—7 window lights broken
642—2 window lights broken

10—4 room houses, Nos.

601—4 window lights broken
603—7 window lights broken—1 door panel broken
608—3 window lights broken—1 door panel broken
620

623—14 window lights broken—1 door panel broken
624
625
639
647—15 window lights broken
648—5 window lights broken

1—5 room ho. No.

616—3 window lights broken, Rear portion of house settled away from front portion.

1—10 room ho. No.

602—4 window lights broken.

Inside House No. 602.

5 wooden bedsteads and w2 sets bed springs.

We, the undersigned, hereby certify, that the accompanying inventory, as noted, is correct and that all the items noted therein are correctly represented.

Aigned in dupkicate this Thirteenth day of June 1906.

MAMMOTH VEIN COAL CO.
By H. Denman Sec'y & Treas.

CHEROKEE CONSTRUCTION CO.
By Jas. P. Gallager Mine Eng.

2585 Exhibit 103.

This Agreement entered into this twenty-sixth day of June A. D. 1909 by and between the Cherokee Construction Company, party of the first part, and the Mammoth Vein Coal Company, party of the second part, Wittnesseth

That Whereas the party of the first part is the owner of the coal mine and coal property in Sebastian County, Arkansas, known as Mine No. 6, and the party of the second part is the owner of a lease adjacent thereto known as the McEachin Lease.

Now Therefore the parties hereto enter into the following covenants and agreements to-wit:

1. That the party of the first part grants to the party of the second part the right to ship the coal mined and taken from said McEachin Lease over the tracks and tipple of said No. 6 Mine for a charge or toll of two (2) cents per ton to

be paid by the party of the second part to the party of the first part for the use of such facilities, which toll of two (2) cents per ton the party of the second part agrees to pay to the party of the first part for every ton of coal thus shipped, payable quarterly on bills rendered to the party of the second part by the party of the first part.

Witness the hands and corporate seals of the parties hereto in duplicate, each an original, the day and year first above written.

CHEROKEE CONSTRUCTION COMPANY
By C. E. Ingersoll Vice President.

Attest:

H. E. Yarnall, Secy.

MAMMOTH VEIN COAL COMPANY
By F. Bache Pres.

Attest:

Heber Denman, Secy.

2586

Exhibit 104.

L e a s e.

This Contract And Agreement made and entered into this the 1st day of May, 1907, by and between Mrs. Belle McEachin widow of D. A. McEachin, Deceased, and Lula S. Howe, R. A. McEachin, and Norma McEachin, his wife, Fanny B. Lake, Pearl Douglass, Ruby Ingram and Wm. D. McEachin, an unmarried man, heirs at law of D. A. McEachin, Deceased, parties of the first part, and the Missousi Coal Company, a corporation, organized under the laws of the State of Missouri, party of the second part,

Witnesseth:

That the parties of the first part for themselves, their heirs, and executors, administrators and assigns, in consideration of the sum of one dollar to them in hand paid, the receipt whereof is hereby acknowledged, and for the further consideration and covenants hereinafter mentioned, have leased and do hereby lease and let to the party of the second part, its successors and assigns the following described lands for the puroses hereinafter mentioned, situated in Sebastian County, Akansas, to-wit:

The West part of the Northeast Quarter, Section 24 Township 5 North, Range 32 West, containing 152 acres, more or less, which includes all of the Northeast Quarter of said section, except two acres held and occupied by Mr. Olive Church and Cemetery, and six acres off of North East corner on East side of James Fork Creek.

With the sole and exclusive privilege of mining for
2587 coal and operating coal mines thereon and taking and selling coal therefrom, for the term and period of thirty years from this date, for the consideration aforesaid, the privilege to take sufficient coal out of said premises for stationary machinery necessary for conducting said mining operations free of charge said party of the second part to correctly weigh and make daily report on daily miners bulletin of all such coal used subject to opproval of parties of the first part, when deducted from total output of coal during the month;

Said parties of the second part shall have the right free of charge to take from said premises all such timber and stone as may be necessary to be used in construction and maintaining said mining business;

That is to say, all of such material as may be necessary to be used in constructing and maintaining said mine or mines, but not to include such timber as is used in building houses, tipples, railroad ties, railroad bridges, and all timber so used for said purposes, shall be paid for at the price of two dollars ($2.00) per thousand feet, standard measure.

And said parties of the second part, shall also for the consideration aforesaid, have the right to erect on said premises all necessary buildings for the purpose of carrying on said coal mining business, including dwellings for miners and other employees of said party of the second part, and said party of the second part, its successors or assigns, shall have the right to build and maintain roads and railways to and from
all shafts, slopes, or strip pits now on said premises,
2588 or that may hereafter be put thereon for the use of said
mine or mines, and said parties of the second part, its agents, successors, or assigns, shall fence all the aforesaid railroad tracks and build and maintain suitable stock gaps thereon; and it is further understood and agreed that said party of the second part, or its legal representatives, shall build and maintain gates on all dirt roads made by them as aforesaid, when said roads enter upon any of the enclosures of said parties of the first part.

It is further understood and agreed that the parties of the second part is to pay all taxes on improvements placed on said premises by the said second party, and the taxes on the realty to be paid by the party of the first part.

It is further understood and agreed that the said parties of the second part, its successors or assigns, shall pay to the parties of the first part, the following royalties, to-wit:

For all mine run coal per miners' bulletin weights, said bulletin weights to include in addition to coal mined by contract, all coal mined and loaded out by company employees and known as "Company Coal", which shall be run on a check number the same as contract coal, eight cents per ton of two thousand pounds, miners' bulletin weights to govern in settlement.

The minimum royalty to be One Thousand Dollars per year for each and every year during the period of this lease, or until the coal that is minable by ordinary mining me-
2589 thods is exhausted and should all of said coal that can be mined from said lease, by ordinary mining methods be exhausted before the expiration of the term of this lease, then the said minimum royalty shall cease.

Said yearly minimum royalty during the life of this lease shall be paid in twelve (12) equal payments of eight three and 33 1/3/100 dollars (83.33 1/3) beginning May 1st, 1907, and payable on or before the first day of each succeeding month until said minimum royalty is paid.

Provided, said second party, its successors or assigns shall have mine or mines, shaft or shafts, in operation on said premises mining and taking coal therefrom, then said royalties shall be paid as hereinafter provided.

In case the royalty on coal mined in any one year shall exceed the sum of One Thousand Dollars, minimum royalty herein referred to, then so much of said over plus as shall be necessary, shall go to the credit of the party of the second part to reimburse them for any dead or advanced royalty they may have paid in any previous year in which the actual royalty amounted to less than One Thousand Dollars.

The royalties as aforesaid are to be paid on the 20th day of each month for coal mined the previous month and in the event that said royalties are not paid as aforesaid, within ninety days from date it comes due, the said parties of the second part, its successors and assigns, shall forfeit this lease and all privileges thereunder, and no improvements or other ma-

chinery shall be removed from said premises or disposed of by said parties of the second part, its successors or
2590 assigns, until royalties herein provided for are fully paid.

Said parties of the second part, its successors or assigns shall furnish the parties of the first part, of their legal representatives, a statement on the 15th day of each month of all coal mined the previous month, said statement to be made upon miners bulletin weights, said bulletin weights to include in addition to coal mined by contract all coal mined and loaded out by company employees and known as "Company Coal" which shall be run on a check number, the same contract coal, and the parties of the first part or their legal representatives, shall at all reasonable hours, have access to the weigh books and other records of rhe coal mined and kpet in its office.

It is further understood and agreed by the parties hereto that coal shall be mined from the above described premises, by the party of the second part, its successors or assigns, with due diligence, and at no time during the period of this lease shall the party of the second part, its successors or assigns discontinue the removal of said coal from the above described premises for more than thirty consecutive days in any one year, unless the same is caused by strike, labor troubles, shortage of cars, floods, explosions, fires, shortage of orders, or other unavoidable circumstances, not within the power of the parties of the second part, its successors and assigns, to prevent.

It is further understood and agreed that all the openings of the mines, shafts, or slopes, are to conform to the mining laws of the state of Arkansas, and no shaft, or other
2591 openings shall be sunk into the coal veins at any point on the above mentioned tract of land that is subject to or liable to overflow, from high water in James Fork Creek, or to connect with any mine or mines subject to, or liable to overflow from high water in James Fork (Creem), nor shall any entries or entry, tunnel or tunnels be driven under James Fork Creek to connect with any mines or mine subject to, or liable to overflow from high water in James Fork Creek, Provided that this restriction will be withdrawn and considered of no effect upon the execution by the party of the second part in favor of the party of the first part of a good and sufficient bond in the sum of Ten Thousand Dollars to indemnify and make safe from all loss that might be occasioned by the overflow and flooding of said mine or mines as the party of the second part see fit to open on said premises, shall be made

by the parties of the second part, its successors or assigns, and one furnished to the said parties of the first part or their legal representatives, and the said party of the second part, its successors or assigns, shall, in operating said mine, shaft, or slope, strictly conform to the laws of the United States and the mining laws of the State of Arkansas.

It is further understood and agreed that the party of the second part, its successors or assigns, may, ay such times as it may deem best, move or cause to be moved, any buildings, machinery, railroad tracks or other material which it may have put upon said premises, without force or process of laws;
provided, however, that the royalties have been fully
2592 paid as aforesaid. It is understood and agreed by the
parties hereto that the said parties of the second part, its successors or assigns, shall have the right to sublet said premises for the purposes of mining said coal as aforesaid, subject to all the conditions of this lease.

It is hereby agreed by the parties of the first part, or their legal representatives, that said part of the second part, its successors or assigns shall have the exclusive right to locate own or conduct a mercantile business said premises for the period of this lease,

It is further understood and agreed that the party of the second part, its successors and assigns, shall survey and plat the land above reserved to erect dwellings on for miners and other employes of said second party, its successors and assigns, in lots not exceeding 50x140 feet deep with streets not exceeding 50 feet wide, alleys of the width of 20 feet.

It is further understood and agreed that said parties of the first part, their legal representatives, shall at all times during reasonable hours have the right to enter said mine or mines, shafts or slopes, for the purpose of investigation.

It is further agreed and understood by the parties hereto, that if the conditions of this lease are not complied with by the parties of the second part, its successors or assigns, that the said parties of the first part, or their legal representatives, may declare this lease at an end by giving the said parties of the second part, its successors or assigns, notice in writing sixty days prior to the cancelling of the same.

2593 In Witness Whereof, we have hereunto set our hands and seals this the First day of May, 1907.

Attest: C. H. Howe,
Witness to every signature.

MRS. BELLE McEACHIN,
LULA S. HOWE,
R. A. McEACHIN,
MRS. NORMA McEACHIN,
FANNIE B. LAKE,
PEARL DOUGLASS,
RUBY INGRAM,
W. D. McEACHIN,
Parties of the First Part
MISSOURI COAL CO.
By J. D. Chastain, President.

Attest:
B. C. Homer, Secretary.

Central Division,
Indian Territory.

Be it remembered that on this day before me G. W. Richardson, a Notary Public, within and for the Central District of the Indian Territory, duly commissioned and acting as such, appeared in person Mrs. Lula S. Howe, to me personally well known as one of the party grantors to the within lease contract, and who stated to me that she had signed and executed said lease contract for the purpose, considerations and usages therein mentioned and set forth. And I do hereby so certify.

In testimony whereof, I have hereunto set my hand and seal in the city of Hugo, I. T. this the 3rd day of May 1907.

(Seal) G. W. RICHARDSON,
Notary Public.

My commission expires July 6th, 1907.

Proof of Lease by Subscribing Witness.

Choctaw Nation, Indian Territory, Central District.

Be it remembered that on this the 3rd day of May, 1907, before me G. W. Richardson, a Notary Public, in and for the District aforesaid, personally appeared C. H. Howe, the subscribing witness to the foregoing lease, to me personally well

known, who, being by me first duly sworn, on his oath
2593a stated that he saw Mrs. Belle McEachin, widow, R. A. McEachin and Norma McEachin his wife, Mrs. Fannie S. Lake and Mrs. Pearl Douglass, lessees in said lease, subscribe said lease on the day of its date for the uses, purpoes and considerations therein expressed; and that he subscribed (the same) as an attesting witness at the request of said lessees.

In Testimony whereof I hereunto set my hand and seal as such Notary Public, at the District aforesaid this 3rd day of May, 1907.

(Seal) G. W. RICHARDSON,
Notary Public.

My commission expires the 6 day of July 1907.

Proof of Lease by Subscribing Witness.

Choctaw Nation, Indian Territory, Central District.

Be it remembered that on this the 3rd day of May 1907 before me G. W. Richardson, a Notary Public, in and for the District aforesaid, personally appeared C. H. Howe, the subscribing witness to the foregoing lease, to me personally well known, who being by me first duly sworn, on his oath stated he saw Mrs. Ruby Ingram, and W. D. McEachin, lessees in said lease, subscribe said lease on the Second day of May, 1907 for the uses, purposes and considerations therein expressed; and that he subscribed the same as an attesting witness at the request of said lessees.

In testimony whereof I hereunto set my hand and seal as such Notary Public, at the District aforesaid, this 3rd day of May, 1907.

(Seal) G. W. RICHARDSON.
Notary Public.

2594 My commission expires the 6 day of July 1907.

State of Arkansas,
County of Sebastian.

On this day came before me, a Notary Public within and for the County and State aforesaid, duly commissioned and acting as such J. D. Chastain, to me personally well known, and made oath that he is the president of the Missouri Coal Company, and that he had signed the foregoing Lease contract and had caused the seal of the said Missouri Coal Company

to be attached to said Lease contract by order of the board of directors of said Missouri Coal Co., and that the seal thereto attached is the genuine seal of said Missouri Coal Co. And also came B. H. Cannon, to me well known and made oath that he is secretary of said Missouri Coal Co. and that he attached the seal of said Company to said Lease contract by order of the president and Board of Directors; and that both said J. D. Chastain and B. H. Cannon acknowledged that they, and the said Missouri Coal Company had executed said Lease contract for the purposes and considerations therein mentioned and set forth, and I do hereby so certify.

In testimony whereof, I have hereunto set my hand and official seal as such Notary Public, this the 1st day of May, A. D. 1907.

(Seal) RANSOM GULLY, Jr.,
Notary Public.

My commission expires May 20th, 1908.

2595 Certificate of Record.

State of Arkansas,
County of Sebastian,
Greenwood District.

I, John E. Tatum, Clerk of the Circuit Court and Ex-Officio Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 22" day of January, A. D. 1908 at 5 o'clock P. M., and the same is now duly recorded with the acknowledgments and certificates thereon, "Record Book 40" page 392.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 5" day of Feb. A. D. 1908.

(Seal) JOHN E. TATUM,
Circuit Clerk and Ex-Officio Recorder,
By . . . . . , Deputy Clerk.

2596 Exhibit 120.

Contract.

Made and entered into this 27th day of March, 1911, by and between the Mammoth Vein Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of $18.00 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One 72" x 18' return tube boiler recently purchased from the Erie Boiler Works and placed at #4 shaft in Sec. 1 T 4 N R 32 West in Sebastian County, Arkansas.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this boiler and fittings shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made [is] of to or by any other individual
2597 or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness our hands and seals this 27th day of March, 1911.

MAMMOTH VEIN COAL COMPANY,
By H. Denman, Treas.

PRAIRIE CREEK COAL MINING COMPANY,
By C. H. Finley, Acting Auditor.

2598 Exhibit 121.

Contract.

Made and entered into this 1st day of January, 1912, by and between the Kali-Inla Coal Company, party of the first part, and the Mammoth Vein Coal Company, party of the second part, Witnesheth:

That for and in consideration of $1.20 per month payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

1.8 tons steel rails located at Mine No. 6.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, these steel rails shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from their present location at No. 6 Mine and they shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this prop-
2599 erty shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel

this lease. And on cancellation of this lease, the party of the second part, shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness our hands and seals this 1st day of January, 1912.

KALI-INLA COAL COMPANY,
By H. Denman.

MAMMOTH VEIN COAL COMPANY,
By C. H. Finley.

2600

Exhibit 123.

Contract.

Made and entered into this 30th day of November, 1910, by and between the Kali-Inla Coal Company, party of the first part, and the Mammoth Vein Coal Company, party of the second part, Witnesseth:

That for and in consideration of $7.40 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One Air Compressor located at Mine #6.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this air compressor shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #6 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sublet, loaned or be made [us] of to or by any other individual or corporation without the written consent of the party
2601 of the first part being obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part, shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness; Our hands and seals this 30th day of November, 1910.

KALI-INLA COAL COMPANY,
By Heber Denman Secy & Treas.
MAMMOTH VEIN COAL COMPANY
By F. Bache.

2602 Exhibit 122.

Assignment of Contract.

For and in consideration of payment of $1.00 the receipt whereof is hereby acknowledged, and other valuable considerations, the Mammoth Vein Coal Company hereby assigns the Kali-Inla Coal Company all its interest in the contract between the Mamomth Vein Coal Company and the Prairie Creek Coal Mining Company dated March 27th, 1911, covering lease of one 72″ x 18′ return tubular boiler located at #4 shaft in Sec. 1 twp. 4 N. Range 32 West, Sebastian County, Arkansas.

MAMMOTH VEIN COAL CO.
By H. Denman
KALI INLA COAL CO.,
By C. H. Finley, Auditor.

2603

Exhibit 124.

Contract.

Made and entered into this 5th day of October, 1910, by and between the Denman Coal Co., party of the first part, and Mammoth Vein Coal Company, party of the second part.

Witnesseth: That for and in consideration of a payment of $35.00 Thirty five dollars per month, payable at the end of each month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease the following described machinery: 35 mine cars 25 moved about Sept. 15-1910 and 10 (or more) taken from Burma shaft previous to that time taken to Mine #6 of Cherokee Cons Co., Sec. 13 T 5 N R 32 W Sebastian County Ark.

Which was removed from the Property of the Denman Coal Co., at its mine number 1, located at Burma, Ark., on or about Sept. 15-1910 and previous.

This property while in the possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease this machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part. And it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

2604 This lease shall not be assigned or the property be sublet, loaned or be made (us) of to or by any other individual, partnership or corporation without the written consent of the party of the first part being first obtained. Neither shall the property be removed from the land where first placed without the written consent of the party of the first part being obtained.

In case the party of the second part ceases to use this machine or property for a period of 3 months consecutive months, the party of the first part of his option may cancel this lease. And on cancellation of this lease the party of the second part shall, at it own cost, return the machinery to the party of the first part to the place from which it was originally taken, or in case the party of the second part failed for

three consecutive months to pay the above mentioned rental, the party of the first part, may at its option cancel this lease, and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

Witness: Our hands and seals this 5th day of Oct. 1910.

DENMAN COAL CO
By H. Denman Pres

MAMMOTH VEIN COAL CO.
Ramson Gully Jr.

2605 Exhibit 108.

Know All Men by These Presents: That for and in conisderation of the premuses hereinafter set forth, we, T. W. M. Boone, and Ella Boone, his wife, lease to the Prairie Creek Coal Company. (hereinafter called the company, which is intended to and does include its successors and assigns), its successors and assigns, the following described real estate situated in the Greenwood district of Sebastian County, Arkansas, to-wit:

The west half of the southeast quarter of the northwest quarter, and the southwest quarter of the northwest quarter, which lie north of Cherokee Creek, and the south twenty-three acres of the northwest quarter of the northwest quarter, all in Section twenty-seven, and the east half of the northeast quarter, the east half of the northwest quarter of the northeast quarter, the southwest quarter of the northeast quarter north of Cherokee Creek, and the east half of the northeast quarter of the southeast quarter, all in Section twenty-eight, Township five North Range thirty-one West.

To Have and to Hold unto the said Prairie Creek Coal Company, its successors and assigns, for a period of twenty years from date hereof, together with the privileges and rights hereinafter set forth.

That said Prairie Creek Coal Company shall have all the farming rights to the surface of said land, and the right to mine coal and quarry stone on all of said land, and the right
to use any stone or timber necessary for building pur-
2606 poses or or for the mining purposes, or which may be necessary for the use of the said company in conduct-

ing its busines of opening, equippinf or operating coal mines or rock quarries on any or all of said land, there being no charge for timber used of rock quarried for the purposes aforesaid.

The said Prairie Creek Coal Company agrees to pay to the said T. W. M. Boone a royalty of five cents per ton on all run of mine coal taken from the land above described, and to pay said Boone five cents per cubic yard royalty for all stone sold by the said company taken from the aforesaid land.

It is agreed that the said company shall pay to the said Boone, on or before the 20th day of each month all royalties due him on coal mined or rock quarried as aforesaid during the preceding month, and it is further agreed that if the total amount of royalty on coal mined and rock quarried as aforesaid during any one year, from said land, shall not amount to twelve hundred dollars, that the said company shall, on or before the first day of January in each year thereafter that said royalty on coal and rock does not amount to twelve hundred dollars, pay to the said Boone a sum sufficient to make the minimum amount paid on this lease in any one year twelve hundred dollars; provided, however, that if the coal on said land should be exhausted for practical mining purposes prior to the termination of this lease, then, in that event, the minimum royalty herein provided shall cease and terminate.

Ir is further agreed and understood between the parties hereto that should any other mineral be discovered on the premises hereinbefore described during the continu-
2607 ance of this lease, that the said company shall have the option of mining said mineral at a royalty to be agreed upon between the parties hereto or their successors or assigns.

The said T. W. M. Boone reserves the right to enter, either in person or by agent, any of the mines or quarries opened by the said said company on said property, at any reasonable time, to inspect the same, and shall have the right to examined the weighing and shipping books of the company, and the said company is to make monthly statements of all coal taken out, and rock taken out, for commercial purposes during the preceding month.

It is further agreed and understood that all of the openings of the mines are to conform to the mining laws of the State of Arkansas, and that at least two plats of said mines shall be made, and one furnished to the said Boone; and the

said company shall, in operating said mines strictly confrm to the laws of the United States and the mining laws of the State of Arkansas.

It is further agreed that the said W. T. M. Boone is to pay the taxes assessed against said land during the continuance of this lease, the said taxes to be paid by him, however, shall not include the mining improvements, or any other improvements, now upon said land or hereafter to be erected thereupon or therein, and in case of a joint assessment of the land and improvements together, the assessment of land is to be separated from the assessment so made by the parties hereto, and the said Boone only to pay the taxes upon the land.

It is further agreed that if the conditions of this lease are not complied with by said company that the said Boone may declare said lease at an end by giving said company no-
2608 tice in writing sixty days prior to the cancelling of the same. Said Boone hereby firther agrees to protect the said company against all parties claiming an interest in the above leased property or damage therein by reason of this lease, and warrants and defends the title to the same.

It is further agreed and understood by and between the parties hereto that if, for any reason, this lease should be cancelled, or when it lapses by its own terms, that the said company shall have the right to move and take away from the above described land any improvements that the said company may have made, or caused to have been made, or that may have been made by any tennants or lessees of said company.

It is expressly understood and agreed that the said Boone shall have a lien on all improvements for the payment of the royalties herein provided for.

This lease is made in substitution of a prior lease which has been lost or misplaced, and does not include the various and (divers) houses which have been erected upon the aforesaid ground by individuals with the consent of the parties hereto and under leases from the company and for which said individual parties pay to the company ground rent.

And I, Ella Boone, wife of the said T. W. M. Boone, for the consideration aforesaid, do hereby release and relinquish unto the Prairie Creek Coal Company all my right and possibility of dower in and to the leased interest herein conveyed.

In Testimony Whereof we have executed this in duplicate on this the 13th day of Nuary 1903.

2609 T W M BOONE
ELLA BOONE

Acknowledgment.

State of Arkansas,
County of Sebastian—ss.

On this 14th day of January, 1903, before me R. C. Johnston, a Notary Public within and for the county and State aforesaid, duly commissioned, qualified and acting, appeared in person T. W. M. Boone, to me personally well known as the person whose name appears upon the within and foregoing lease, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

And I further certify that on the same day voluntarily appeared before me Ella Boone, wife of the said T. W. M. Boone to me well known to be the person whose name appears upon the foregoing lease, and in the abdsence of her said husband, stated and declared that she had of her own free will executed said lease, and had signed (thr) relinquishment of dower therein expressed, for the purposes and consideration therein contained and set forth without compulsion or undue influence of her said husband.

In testimony whereof, I have hereunto set my hand and seal of office as such Notary Public at the county and State aforesaid, on this the 14th day of January 1903.

R. C. JOHNSTON
Notary Public

My commission expires Nov. 28-1903.

2610 For and in consideration of the premises set forth in the foregoing lease of T. W. M. Boone, the Prairie Creek Coal Company hereby accepts the same and agrees to the terms conditions, and limitations therein set forth.

In Testimony whereof it has hereunto set its hand and corporate seal this the 13th day of January 1903.

PRAIRIE CREEK COAL COMPANY
By H. B. Salls

(Seal)

H. F. Rogers
Secretary.

State of Arkansas,
County of Sebastion—ss.

Before me, the undersigned, a Notary Public within and for the county and state aforesaid, duly commissioned and acting, personally appeared H. B. Salls, and Horace F. Rogers, to me personally well known adn known to be the Vice President and Secretary, respectively, of the Prairie Creek Coal Company, a corporation created under and by authority of the laws of the State of Arkansas, and they acknowledge and declared that they had accepted and executed the above and foregoing lease for the Prairie Creek Coal Company, pursuant to the authority and direction of the Board of Directors of said Prairie Creek Coal Company, for the purposes and consideration therein mentioned and set forth.

In Testimony Whereof I have hereunto set my hand and affixed my Notarial Seal this the 15 day of January 1903, at the county and state aforesaid.

2611 (Seal) A. S. DOWD
Notary Public

My commission Expires Feb 12th 1906.

Certificate of Record.

State of Arkansas,
County of Sebastian,
Greenwood District—ss.

I, John E. Tatum, Circuit Clerk and Ex-Officio Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on tje 16 day of Jan. A. D. 1903 at 7:30 o'clock A. M. and the same is now duly recorded with the acknowledgments and certificates thereon, "Record Book 81" page 5.

In witness wherepf. I have hereunto set my hand and affixed the seal of the said court this 23 day of Jan. A. D. 1903.

(Seal) JOHN E. TATUM
Circuit Clerk and Ex-Officio Recorder
By Deputy Clerk

The Sebastian County Coal Company hereby authorizes the Coronado Coal Company to asign to the Arkoal Company all the right, title and interest that the Sebastian County Coal Company has assigned to the Coronado Coal Company in the

surface of the land leased by the Sebastian County Coal Company to the Coronado Coal Company.

SEBASTIAN COUNTY COAL CO
By F. Bache Pres
Ramson Gully Jr Secy

2612 Ft. Smith, Ark., Oct. 5, 1909.

Franklin Bache hereby authorizes and agrees to the deed of the Coronado Coal Company to eh Arkoal Company. dated September 14, 1909, conveying the Coronado Coal Company surface rights to the Arkoal Company

FRANKLIN BACHE

Ft. Smith, Ark., Oct. 5 1909

The Sebastian County Coal Company hereby accepts and agrees to the assignment of the lease from the Sebastion County Coal Company to Franklin Bache dated January 1, 1907 to the Coronado Coal Company by the said Franklin Bache, said assignment being dated January 1, 1907.

SEBASTIAN COUNTY COAL COMPANY
Ransom Gully Jr Secy
By F. Bache Pres

(The paper hereinafter referred to, attached to Exhibit 112 is in words and figures folowing to wit:)

Know All Men By These Presents: That I, Franklin Bache Lesses in the above and foregoing lease, for and in consideration of the sum of Ten Thousand ($10,000.00) Dollars to me in hand paid, the receipt whereof is hereby acknowledged, and a further consideration of the Coronado Coal Company, the Grantee herein, assuming and agreeing to carry out all of the conditons and obligations which I as Lessee am in any way liable for according to the terms and conditions of the above and foregoing Lease, do hereby transfer, assign and
2613 set over to the said Coronado Coal Company, a corporation organized under the laws of the State of West Virginia, all of my right, title, interest, and privilege of every kind and character which I have by reason of the above and foregoing lease.

To Have And To Hold the same under the said Coronado Coal Company, and unto its successors and assigns as fully and completely as if the original lease hereto attached had been made with the said Coronado Coal Company, and as fully and completely as I can transfer, convey, set over and deliver the same to the said Coronado Coal Company.

In Testimony of Whereof, I have hereunto set my hand on this the 1st day of Jany, 1907.

F. BACHE.

State of Arkansas,
County of Sebastian.

On this the 1st day of Jany, 1907, before me Ransom Gully Jr. a Notary Public, within and for the County and state aforesaid, personally appeared Franklin Bache, to me personally well known and stated that he had signed and executed the above and foregoing instrument for the considerations and purposes therein mentioned and set forth.

In Testimony whereof I hereunto set my hand and seal on this date first above written.

RANSOM GULLY Jr.
(Seal) Notary Public.

My commission expires: 5/20-08.

2614 Exhibit No. 112.

"Lease on Coal land.

This agreement, made this first day of Jany 1907, by and between Sebastian County Coal Company, of the first part, hereinafter designated "Lessor" and Franklin Bache, of the second part, hereinafter designated "Lessee", Witnesseth:

That Whereas, the said Lessor has become and is the owner of a lease covering the coal land hereinafter described and having full power to sub-lease, the same, and being desirous of leasing the same for the purpose of obtaining royalties on as large production of coal from the hereinafter described premises as practicable.

Now, Therefore, the parties hereton enter into the following covenants and agreements, to-wit:

First: The said Lessor, for and in consideration of the rents, royalties, covenants and agreement hereinafter mentioned and specified on the part of the said Lessee to be paid

and performed, has leased, demised and let, and does hereby lease, demise and let unto the said lesses for the term of Sixteen (16) years from the Thirteenth (13) day of January, 1907, the following premises, situate in Sebastian County, State of Arkansas, to-wit:

The West half of the Southeast Quarter of the Northwest Quarter, and the Southwest Quarter of the Northwest Quarter which lies North og Cherokee Creek and the south twenty three (23) acres of the Northwest Quarter of the Northwest Quarter all in Section Twenty-seven (27), and the East
2615 half of the Northeast Quarter, the East half of the Northwest Quarter of the Northeast Quarter, the Southwest Quarter of the Northeast Quarter North of Cherokee Creek, and the East half of the Northeast Quarter of the Southeast Quarter, all in Section Twenty eight, Township Five, North Range Thirty-one West.

Second: With the exclusive right to dig for and mine, remove and dispose of coal in, under and upon the above described land, together with all houses situate on said above described premises over which Lessor herein has control.

Third: The right to cut and use for the purpose of mining operations, any timber on said above described land.

Fourth: The right to erect miner's houses, tipples and such other building or works, including water supply reservoirs, as may be necessary or convenient in the operation of the said mine, and to erect and operate coke ovens upon any portion of the said above described land, together with the right to dig, hew and use for the purpose of said mining operation, such building stone, fire clay, and other building materials as may be found upon said tract of land above described.

Fifth: The right to use such running water as may be found upon any of the tracts hereby leased, or found upon the surface which covers any of the coal hereby lease, to the extent that the Lessor has the right to use the same; Provided, such use of the said water shall in no way interfere with its use on other land now owned or which may hereafter be acquired by the said Lessor.

2616 Sixth: The said Lessor hereby covenants and agrees to and with the said Lessee that it shall and may at all times, hereafter during the continuance of the term hereby granted, peaceably and quietly have, hold, possess and enjoy the premises and exercise the right hereby demised, with-

out let or hindrance by or from the said lessor or by or from any person or persons lawfully claiming the same or any part thereof by, from or under him.

Seventh: The said Lessor hereby retains and reserves the right, and the Lessee hereby covenants that the said Lessor shall have the right, by his officers, servants, agents and engineers, at all times to enter into and upon the said premises, both on and below the surface and to inspect, examine and make surveys thereof; and the said Lessee doth covenant and agree to accurately survey, not less frequently than once in every six (6) months, all new mine workings, entries, air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than two hundred (200) feet to one (1) inch, and to furnish the Lessor, not less frequently than on in six months, with an accurate copy of said map.

Eighth: The said Lessor further reserves during the continuance of this lease, for himself, and his assigns and lessees, and any and all of them the right of way over any and every part and portion of the herein demised premises for roads, railways, waterways and side tracks, and also such use as they and any and all of them may desire of all tracks, roads, railways, waterways and side tracks constructed by the
2617 said Lessee upon the herein demised premises as provided hereinafter in this paragraph. Provided that proper compensation shall be made by the said Lessor and his assigns and lessees, and any and all of them, for such use of said track, roads, railways, waterways and side tracks constructed by the said Lessee, such proper compensation, if not mutuallt agreed upon, to be determined by arbitration as hereinafter provided.

Ninth: It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all the coal contained therein; and to accomplish this end, among other, the lessee expressly agrees to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual mining of the largest amount of coal from the entire premises hereby demised; and for the purpose of assuring this end tp the Lessor with greater certainty, the Lessee agrees to maintain in good working order all entries and gangways, air courses, slopes, shafts, and planes until the coal between the faces of any of the said entries, gangways, air courses, slopes, shafts or planes and that portion of the boundary of the demised premises towards which any of said entries, gangways, air courses, slopes shafts or planes may

be directed is mined out as fully as it can be mined out by first class mining methods, or until the Lessor gives his consent in writing to the abandonment of any of the same.
2618 And the Lessee agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings underground shall be laid out and conducted in a thorough and substantial manner and in accordance with first class mining methods, and expressly with a view to the fullest development of the demised premises; and that the Lessee shall maintain pillars in the mine or mines or dimensions fully sufficient to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out.

And it is further expressly agreed that the Lessee shall conduct no stripling operation on the coal beds hereby demised without the written consent of the Lessor being first had, and the Lessee shall leave intact at all times a strip of coal fifty yards in breadth next adjoining the boundaries of the demised premises, except where the said strip is penetrated by the principal slope and air course at the out crop of the coal bed.

That the Lessee shall maintain all buildings and machinery and other appurtenances to the mine in good condition and working order; that it will not do, or permit, or suffer to be done any damage or injury to the said premises, property or appurtenances that it will so arrange and conduct the said mining operations as to cause no interference either with the use by the said Lessor of the surface covering the coal hereby leased, excepting that surface hereby demised, or with land of said Lessor bounding on the tracts of land hereby
2619 leased; and that the said mining operations shall not injure or endanger any buildings or structures which the said Lessor now has standing or may hereafter cause to be constructed on the said surface or bounding lands.

The Lessee hereby expressly agrees that it will at all times keep the workings of the mine operated by it on the said demised premises free from water and dangerous gases.

Tenth: The said Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the State of Arkansas regulating the mining of coal, and agrees to protect the Lessor against the violation of said laws by said Lessee.

Eleventh: As a part of the consideration of this lease the said Lessee hereby covenants and agrees to assume all liabiiity in the operation of said mine and hereby agrees to protect and save harmless the said Lessor from any claim, damage, personal injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employes in the operation of said mine.

Twelfth: The said Lessee covenants that it will at the termination of this lease deliver up and seurrender to the said lessor, to be and remain the property of the same, all and singular the premises, rights and privileges herein demised and leased, together with all the mines, entries, openings, tramways, inclines, chutes, tipples, tipple houses, cross ties, sleepers, sills and appurtenances whatsoever in good working order and repaired; but on such termination of this lease the working tools and implements used in mining, together
2620 with all machinery miners' houses, engines, fans, boilers, pumps, ropes, weighing scales, rails and pit cars placed upon said premises by the said Lessee shall be and remain the property of the said Lessee. But it is hereby expressly agreed that upon such termination of this lease the said Lessor shall have the right as regards the said working tools, mining implements, machinery, tracks, pit cars, rails and miner's houses declared as aforesaid to be the property of the said Lessee to purchase the same from the said Lessee at a fair market price, to be determined, if not mutually agreed on, by arbitration as hereinafter provided for.

If the said Lessor shall not avail himself of such right of purchase, then the said Lessee may remove the same provided all royalties then due the said Lessor by the said Lessee be paid and all and singular of the other covenants and agreements of this lease be performed, such right of removal, however, to terminate ninety (90) days after the termination of said lease.

Thirtenth: The said Lessee further covenants and agrees that it will not at any time during the term of this lease assign, either voluntarily or involuntarily, sub-let or transfer the same or any part thereof, or sub-let or transfer the same or any part thereof, to any person or persons, or corporation whatsoever, without the written consent of the said Lessor, under his seal, first had and obtained; but said Lessee may construct necessary dwellings for its employees upon
2621 the tract as aforesaid leased for, in part, that purposes; and also the dwelling houses now on premises control-

led by Lessor and may sub-let such dwellings to its employees while they remain in the service of said Lessee; provided that the Lessee herein is hereby authorized and granted the privilge of sub-leasing or transferring this lease to the Coronado Coal Company, a corporation organized under the laws of the State of West Virginia, for such consideration and upon such terms as the said Lessee may desire, and permission for so doing is hereby granted.

Fourteenth: The said Lessee agrees to pay to the said Lessor a royalty of ten cents per ton on all coal mined from the above described land, and it is further agreed that the said Lessee shall pay to the said Lessor on or before the 20th day of each month all royalties due on coal mined as aforesaid during any one year, from said land, shall not amount to twelve hundred dollars, that the said Lessee shall, on or before the first day of January in each year thereafter that said royalty on coal does not amount to twelve hundred dollars, pay to the said Lessor a sum sufficient to make the minimum amount paid on this lease in any one year twelve hundred dollars; provided, however, that if the said coal on said land should be exhausted for practical mining purposes prior to the termination of this lease, then in that event, the minimum royalty herein provided shall cease and terminate.

2622 Fifteenth: And the said Lessor, if he so elects, shall have the right to weigh all coal and coke loaded on cars before the same are shipped, and the said Lessee covenants that the said Lessor may so weigh all said coal and coke before shipment, without let or hindrance, from all the operations of the said Lessee; and shall any dispute arise as to the accuracy of the scales on which the coal and coke are weighed either by the said Lessor or the said Lessee, then such dispute shall be settled by testing the said scales by government weights.

The said Lessee further covenants and agrees to furnish within five (5) days from the last day of every month (calendar) at the office of the Lessor in Fort Smith, Ark., a report properly authenticated, showing the coal mined or dug and used or removed from the said mine during the preceding calendar month, and to pay to such person or corporation as said Lessor shall direct the amount of the rent or royalty due for the said preceding month; and if any coal shall have been taken from the said premises and wasted, or left as slack coal in the mines, and not weighed and not accounted for, the quantity of same shall be ascertained, an account rendered

for the same and payment made at the rate above named. And the Lessee covenants that it will keep a book or books of account of the mining and shipping of coal and coke, and that said book or books shall be open to the inspection of said Lessors and their agents or attorneys for the purpose of comparing and verifying the accounts rendered.

2623 Sixteenth: Should the royalty on coal mined in any year not amount to the minimum rental for that year, then the said Lessee covenants and agrees that it will pay to the said Lessor dead rentals so that the same shall equal the minimum rental aforesaid, but the said Lessee shall have the privilege of mining during the next succeeding year, free from royalty, such a quantity of coal over and above the quantity which will yield the said minimum rental for that year, as will in royalties reimburse the said Lessee for the dead rentals paid during the preceding year.

Seventeenth: The said Lessee covenants and agrees to pay all taxes that may be assessed against the demised premises and the improvements thereon, and upon the coal mined or coke manufactured during the continuance of this lease.

Eighteenth: Any difference as to the proper manner of mining or as to quantity of available coal to be left standing before abandoning any entry, room, shaft, working or other opening, or any difference whatsoever which may arise as to the method of skillfully conducting said mining operation, and any other matter herein specifically referred to arbitrators, shall upon motion of either party to this lease, be referred for settlement to a board of arbitrators, which shall be substituted and chosen in the following manner: The party alleging such nonperformance or breach by the other shall give ten days' notice in writing to the other party of the appointment of an arbitrator to act hereunder and thereupon it shall be the duty of the party so notified to appoint
2624 within five (5) days an arbitrator to act with the one thus appointed. In the event of a failure to appoint within five (5) days, the other party may appoint one in his or their stead. In the event that the two thus appointed shall fail to agree, they shall select a third party, and in the event of their failure to agree on the selection of such third party, within five (5) days after their failure to agree as to the matter or matters in dispute, the third member may, on application of either party be appointed by the Judge of the United States Circuit Court, for the Western District of Arkansas. The decision of the majority of the three arbitrators

when finally settled shall be binding and conclusive upon the parties hereto.

Nineteenth: It is further covenanted and agreed by and between the parties hereto that in the event that the said lessee shall delay or refuse to comply with the terms of this lease and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessee, have the right to reenter upon the demised premises in as full and complete possession as if the terms of this lease were fully performed and ended by limitation.

Twentieth: In the event of such termination of this lease for a breach of contract by the Lessee the said Lessee shall not have the right to remove from the premises any of the coal which may have been mined previous to such termination of this lease, or working tools, machinery or other property, until the said Lessee has made full satisfaction to the
2625 Lessor for any and all damage which he may sustain by reason of such delay or refusal to comply with the terms of this lease; and in that event none of said properties aforesaid shall be removed from said premises until all royalties and other payments due the said Lessor hereunder shall have been paid to the said Lessor; otherwise, such coal, tools, machinery and property shall become the property of the said Lessor. And in the event of any controversy arising out of the matter in this paragraph contained, the same shall be referred to the Board of arbitrators as hereinbefore provided and all properties shall remain on said premises until a decision is reached by the arbitrators.

Twenty-first: It is hereby expressly agreed that nothing herein contained shall interfere with the right on the part of the said Lessor to distrian for rent due in arrears under the terms of this lease.

Twenty-second: It is hereby agreed that all rights vested in the said Lessor by this lease shall pass to and vest in his successors or assigns, and that all covenants and agreements on the part of the said Lessee to be kept and performed shall be kept and performed by the said Lessee and by its heirs, executors, administrators and assigns, or by the successors and assigns of the Lessee if the Lessee is a corporation, for the benefit and advantage of the Lessor and his successors and assigns.

Twenty-third: It is hereby agreed that the said Lessee shall keep the said Lessor informed of the place of its offices

and the names of its agents, whether in this state or elsewhere; and that the said Lessor shall keep the said
2626 Lessee informed of any change in or transfer of the said Lessor under this lease.

Witness the hands and corporate seal of the parties hereto in duplicate, each an original, the day and date first above written.

SEBASTIAN COUNTY COAL CO.
By Joseph M. Spradling,
President Lessor.

(Corporate Seal)

Attest:
J. L. Spradling,
Secretary.

FRANKLIN BACHE,
Lessee.

State of Arkansas,
County of Sebastian

On this the 4th day of April, A. D., 1907, before me.....
.....a Notary Public, within and for the County of Sebastian, State of Arkansas, personally appeared J. M. Spradling, personally known to me as the President of Sebastian County Coal Company, and J. L. Spradling, personally known to me as the Secretary of the said Company, and in my presence state that they executed the above and foregoing instrument for and on behalf of the said Sebastian County Coal Company for the consideration and purpose therein mentioned and set forth, and further state on oath that they are and that president and secretary, respectively of said corporation; and that the said corporation by authority of its Board of Directors had duly authorized them to execute the said instrument above mentioned, and state that the said instrument was the free act and deed of the said Sebastian County Coal Company.

2627 In Testimony whereof, I have hereunto set me hand and seal as such Notary Public, on this the 4th day of April, 1907.

(Signed) (signature illegible)
Notary Public.

(Seal)

My commission expires Sept. 29th, 1907.

State of Arkansas,
County of Sebastian.

On this the 1st day of Jany., 1907, before me Ransom Gulley, Jr., a Notary Public, within and for the county and state aforesaid, personally appeared Franklin Bache, to me personally well known, and stated that he had executed the above and foregoing instrument for the consideration and purposes therein mentioned and set forth, and I do so certify.

In Testimony whereof, I have hereunto set my hand and seal as much Notary Public on this the.....day of..... 1907.

(Signed) RANSOM GULLEY, Jr.,
Notary Public.

(Seal)

My commission expires May 20th, 1908.

2628 Exhibit 109.

Assignment of the Boone Lease.

To the Sebastian County Coal Company.

Whereas, on the 13th day of January, 1905, T. W. M. Boone and Ella Boone, his wife, leased to the Prairie Creek Coal Company, its successors and assigns, the following described real-estate located in the Greenword District of Sebastian County in the State of Arkansas, to-wit:

West half of the Southeast quarter of the Northwest quarter and the Southwest quarter of the Northwest quarter which lies North of the Cherokee Creek, and the South twenty three (23) acres of the Northwest quarter of the Northwest quarter all in section twenty-seven (27); and the East half of the Northeast quarter, the East half of the Northwest quarter of the Northwest quarter the Southwest quarter of the Northeast quarter north of Cherokee Creek, and the East half of the northeast quarter of the Southwest quarter, all in Section twenty-eight (28) Township five (5) North, Range thirty-one (31) West:

for a period of twenty-five years from the date of said lease with the privilege to the Prairie Creek Coal Company, among other things of removing the coal from under the premises so leased; and:

Whereas, the Prairie Creek Coal Company has heretofore conveyed its rights inder this lease to the American Smokeless Coal Company; and

Whereas, the said lease, together with all improve-
2629 ments thereon has been sold to the Cherokee Construction Company, at a sale under execution issued against the said

American Smokeless Coal Company; and,

Whereas, Joseph M. Spradling, of Hartford, Arkansas, has purchased all the right of the Cherokee Construction Compand and the rights of the American Smokeless Coal Company, in and to said lease and the improvement on said leased, premises; and,

Whereas, the said Joseph M. Spradling has agreed to sell assign and convey the said lease, with all the improvements thereon, to the Sebastian County Coal Company;

Now, Therefore, This Agreement Witnesseth:

That, for and consideration of the sum of four thousand dollars ($4000.00) to the said Joseph M. Spradling in hand paid, receipt whereof is hereby acknowledged, I, the said Joseph M. Spradling do hereby sell, assign, transfer and convey the said lease, together with all the improvements, thereon, to the said Sebastian County Coal Company, its successors and assigns, to their sole use and behoff forever.

And, the said Sebastian County Coal Company, by its acceptance of this conveyance and transfer hereby covenants and agrees to assume the payments of all royalties due the said Boone under said lease for the year 1905 and subsequent years, and to assume all obligation under the lease.

In testimony whereof, I have hereunto set my hand
2630 seal on this the 22 day of November 1905.

(Signed) JOSEPH M. SPRADLING.

The above and foregoing transfer and conveyance of said lease is hereby accepted, and ratified in all its terms.

This November 22, 1905.

SEBASTIAN COUNTY COAL COMPANY,
(Signed) By Joseph M. Spradling,
President.

Attest:

.....

Acknowledgment.

State of Arkansas,
County of Sebastian—ss.

Be it remembered that on the 6th day of April 1907, before me, the undersigned Notary Public within and for the County and State aforesaid duly commissioned and acting, personally appeared Joseph M. Spradling, to me well known as the person whose name appears to and upon the above and foregoing assignment of lease as party grantor, and stated that he has executed the same for the purposes and considerations therein mentioned and set forth.

In testimony whereof I have hereunto set my hand and seal of office on the day and year first above written.

(Signed) A. J. DOWD,
Notary Public.

(Seal)

My commission expires Feby. 12, 1910.

2631 Exhibit No. 113.

"This Agreement, made in duplicate this 23rd day of December, 1913, by and between the Arkansas Coal and Mining Company, a corporation, hereinafter called the "Lessor", party of the first pary, and the Coronado Coal Company, a corporation, hereinafter called the "Lessee", party of the second part, Witnesseth:

That the Lessor, in consideration of the sum to be paid and the covenants and agreements to be kept and performed by the Lessee, as hereinafter set forth, does hereby grant, to the Lessee the right to mine and remove the coal remaining beneath the surface of the East Half (½) of the Northwest (¼) of Section Twenty-eight(28); the West Half (½) of the Northwest Quarter (¼) of the Northeast Quarter (¼) of Section twenty-eight (28): that portion of the Southwest Quarter (¼) of the Northwest Quarter of Section twenty-eight (28) located East of the following described line:

Beginning at a point in the South line of said Southwest Quarter (¼) of the Northwest Quarter (¼) two hundred eighty and five-tenths (280.5) feet East of the Southwest Corner of the Northwest Quarter (¼): thence North parallel to the West line of the Northwest Quarter (¼) to a point in the center of Cherokee Creek channel to the point of intersection with the North line of the Southwest Quarter (¼)

of the Northwest Quarter (¼). Also a three (3) acre tract in the Southeast Corner of the Northwest Quarter (¼)
2632 of the Northwest quarter (¼) of Section twenty-eight (28), more particularly described as follows:

Beginning at the Southeast Corner of the Northwest Quarter (¼) of the Northwest Quarter (¼); thence North along the East line of the Northwest Quarter (¼) of the Northwest Quarter (¼) three hundred sixty-one and five-tenths (361.5) feet; thence West three hundred sixty-one and five-tenths (361.5) feet; to a point in the South line of the Northwest Quarter (¼) of the Northwest Quarter (¼); thence East three hundred sixty-one and five-tenths (361.5) feet.

2633 Exhibit 124.

This Agreement, executed in triplicate this 23rd day of December, A. D., 1913, by and between the Arkansas Coal and Mining Company, a corporation organized and existing under the laws of the State of Arkansas, first party, and the Smokeless Fuel Company, a corporation organized and existing under the laws of the State of Arkansas, second party, and the Coronado Coal Company a corporation organized and existing under the laws of the State of West Virginia, third party,

Witnesseth, that

Whereas, the second party, under a lease from the first party, has mined and removed some coal from a strip of land containing nine (9) acres, being the West nine (9) acres of the East half (½) of the Northwest Quarter (¼) of the Northeast Quarter (¼) of Section twenty-eight (28), in Township five (5) North, Range thirty one (31) West, and also from the Southwest Quarter (¼) of the Northeast Quarter (¼) of said Section twenty-eight (28), all situate in Sebastian County, Arkansas, and the first party and the second party claim that the second party has the right, under its lease with the first party, to mine and remove coal from said nine (9) acres of land, and the third party denies such claim; and

Whereas, there is in existence a lease, dated January 15, 1907, from the first party to the second party, by which the first party granted the second party the right to mine and remove coal from Beneath the surface of the Southeast Quar-

ter (¼) of the Northwest Quarter (¼) of said Section
2634 twenty-eight (28), among other tracts of land referred to in said lease; and

Whereas, the parties heretofore desire to compromise and settle the controversy between them concerning the mining and removal of coal by the second party from said nine (9) acres of land and from said Southwest Quarter (¼) of the Northeast Quarter (¼) of said Section twenty eight (28).

Now, Therefore, in consideration of the mutual covenants, promises and agreements herein contained, it is agreed by and between the parties hereto, as follows:

1. The second party will, on or before July 1, 1914, cease to mine and remove coal, under said lease of January 15, 1907, from the Southeast Quarter (¼) of the Northwest Quarter (¼) of said Section twenty eight (28), and other lands referred to in said lease.

Conditional on the second party agreeing to cease to mine and remove coal from said tract of land last described on or before July 1, 1914, the first party and the third party will executed a coal mining lease, by which the first party will grant to the third party the right to mine and remove coal from the East Half (½) of the Northwest Quarter (¼) of Section twenty eight (28); the West half (½) of the Northwest Quarter (¼) of the Northeast Quarter (¼) of Section twenty eight (28); that portion of the Southwest Quarter (¼) of the Northwest Quarter (¼) of Section twenty eight (28) located East of the following described line:

Beginning at a point in the South line of said South-
2635 west Quarter (¼) of the Northwest Quarter (¼) two hundred eighty and five-tenths (280.5) feet East of the Southwest Corner of the Northwest Quarter (¼); thence North parallel to the West line of the Northwest Quarter (¼); to a point in the center of Cherokee Creek channel; hence along the center line of Cherokee Creek channel to the point of intersection with the North line of the Southwest Quarter (¼) of the Northwest Quarter (¼). Also a three (3) acre tract in the Southeast Corner of the Northwest Quarter (¼) of the Northwest Quarter (¼) of Section twenty-eight (28), more particularly decsribed as follows:

Beginning at the Southeast Corner of the Northwest Quarter (¼) of the Northwest Quarter (¼)¢ thence North along the East line of the Northwest Quarter (¼) of the Northwest Quarter (¼) three hundred sixty-one and five-tenths (361.5) feet; thence West three hundred sixty-one and

five-tenths (361.5) feet; thence south three hundred sixty-one and five tenths (361.5) feet to a point in the South line of the Northwest Quarter (¼) of the Northwest Quarter (¼); thence East three hundred sixty-one and five-tenths (361.5) feet to the point of beginning.

All above described lands located in Section twenty eight (28), Township five (5) North, Range thirty-one (31) West, Sebastian County, Arkansas, containing in all one hundred and thirty-eight (138) acres, more or less;

For the period commencing July, 1, 1914, and continuing until the third party shall complete the mining and removal of coal from the tract of land last above described, sub-
2636 ject to the terms and conditions set forth in such lease.

2. The third party hereby releases, discharges and acknowledges full satisfaction of all its claims and causes of action against the first party and the second party on account of the mining and removal of coal by the second party from the said West nine (9) acres of the East Half (½) of the North west Quarter (¼) of the Northeast Quarter (¼) of said Section twenty eight (28), and from the Southwest Quarter (¼) of the Northeast Quarter (¼) of said Section twenty-eight (28), and on account of all acts or omissions whatsoever, which may have been done or omitted by the first party or the second party in connection with the mining and removal of coal from the tracts of land last above described.

In Witness Whereof, the parties hereto have executed this agreement in triplicate the day and year first above written.

ARKANSAS COAL AND
MINING COMPANY
By (Signed) W. C. Nixon,
President

(Seal)

Attest:
(Signed) F. H. Hamilton,
Ass't Secretary.

SMOKELESS FUEL
COMPANY,
By (Signed) C. C. Woodson,
Pres.

(Seal)

Attest:
(Signed) G. R. Holbrook,
Secretary.

CORONADO COAL
COMPANY
By (Signed) F. Bache,
(Seal) Pres.

Attest:
(Signed) E. P. Joyner,
Secretary.

2637 State of Arkansas,
County of Sebastian—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County F. Bache and E. P. Joyner to me personally well known to he the President and Secretary respectively, of the Coronado Coal Company, a corporation, and acknowledge that they had executed the foregoing instrument as such President and Secretary respectively, of the Coronado Coal Company, a corporation, and acknowledge that they had executed the foregoing instrument as such President and Secretary for and on behalf of the said corporation, as its and their free and voluntary act and deed, for the purpose and considerations therein mentioned and set forth and I do so certify.

Witness my hand and notarial seal this 29th, day of December 1913.

(Signed) C. H. FINLEY,
(Seal) Notary Public.

My commission expires May 16, 1914.

State of Arkansas,
County of Sebastian—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County, C. C. Woodson and G. R. Holbrook to me personally well known to be the Pres. and Secy. Respectively, of the Smokeless Fuel Co., a corporation and acknowledged that they had executed the foregoing instrument as such President and Secretary for and on behalf of the said corporation, as its and their fee and voluntary act and deed for the purposes and considerations therein mentioned and set forth, and I do so certify.
2638

Witness my hand and notarial seal this 29th, day of Jany. 1914.

(Signed) Z. T. BEATY

(Seal) Notary Public.

My commission expires November 7, 1914.

State of Missouri,
City of St. Louis—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and City, W. C. Nixon and F. H. Hamilton, to me personally well known to be the President and Ass't Secretary respectively, of the Arkansas Coal and Mining Company, a corporation, and acknowledged that they had executed the foregoing instrument as such President and Ass't Secretary for and on behalf of the said corporation, as its and their free and voluntary act and deed, for the purposes and considerations therein mentioned and set forth, and I do so certify.

Witness my hand and notarial seal this 16th day of February, 1914.

(Signed) R. L. KLEIN,

(Seal) Notary Public.

My commission expires October 9th, 1916.

2639 Exhibit No. 125.

"Contract.

Made and entered into this 5th day of October, 1910, by and between the Denman Coal Co., party of the first part, and Coronado Coal Co. Coal party of the second part.

Witnesseth:

That for and in consideration of a payment of 12.00 dollars per month, payable at the end of each month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease the following described machinery. One 48" x 14'-0" return tube boiler and stack and fittings taken to Arkoal in Sec. 28 T 5 N R 31 W on Frisco R. R. Sebastian Co. Ark.

Which was Removed From the Property of the Denman Coal Co., at its mine number 1, located at Burma, Ark., on or about Aug. 1st, 1910.

This property while in the possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease this machinery and material shall be returned to the party of the first part by the party of the second part of the place from which it was originally taken without any cost to the party of the first part, and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property be sublet, loaned or be made use of to or by any other individual,
2640 partnership or corporation without the written consent of the party of the first part being first obtained. Neither shall the property be removed from the land where first placed without the written consent of the party of the first part being obtained.

In case the party of the second part ceases to use this machinery or property for a period of 4 consecutive months, the party of the first part at his opinion may cancel this lease. And on cancellation of this lease the party of the second part shall, at its own cost, return the machinery to the party of the first part to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part, may at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

Witness: Our hands and seals this 5th day of Oct. 1910.

DENMAN COAL CO.
BY H. DENMAN, Pres.
CORONADO COAL CO.
By Ramon Gulley, Jr.

2641 Exhibit No. 126.

"Contract

Made and entered into this 27th day of March, 1911, by and between the Denman Coal Company, party of the first part and the Coronado Coal Company party of the second part.

Witnesseth: That for and in consideration of a payment of $12.00 per month, payable at the end of each month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease the following described machinery:

One 48" c 14'-O return tube boiler stack and fittings taken to Arkoal in Sec. 28 T 5 R 32 W on Frisco Railroad, Sebastian County, Arkansas, which was removed from the property of the Denman Coal Company at its mine No. 1, located at Burma, Ark., on or about March 1, 1911 this being the second boiler removed from this property to the Coronado Mine.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease the machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part. And it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property, sub-let, loaned or be made use of to or by any other individual,
2642 partnership or corporations without the written consent of the part of the first part being first obtained.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease the party of the second part shall, at his own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the amove mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

Witness: Our hands and seals this 27th day of March, 1911.

DENMAN COAL COMPANY,
By H. Denman, Pres.
CORONADO COAL COMPANY
By C. H. Finley,
Acting Auditor."

2643 Exhibit No. 127.

"Mine Car Lease
between
Mammoth Vein Coal Company and Coroando Coal Company

For and in consideration of $1.00 per month per car the Mammoth Vein Coal Company hereby leases to the Coronado Coal Company Sixteen (16) mine cars for a period of one (1) year from date. It being understood that the Coronado Coal Company were to keep these cars in repair and return them to the Mammoth Vein Coal Company at any time the Mammoth Vein Coal Company wishes them and in good repair as when rented to the Coronado Coal Company.

The Mammoth Vein Coal Company shall have the right at any time to demand the return of these cars and the Coronado Coal Company shall return them within 15 days after receiving notice to return the cars in as good repair as when received.

The amount of rental shall be paid on or before the 25th of the month for the proceeding month. In case any car is destroyed while in possession of the Coronado Coal Company the Coronado Coal Company shall either pay the Mammoth Vein Coal Company the cost price of the car or furnish them a car to take its place of the same type and as good as when received.

MAMMOTH VEIN COAL COMPANY,
By (Signed) H. Denman.

CORONADO COAL COMPANY,
By (Signed) H. Denman.

Midland, Ark, January 3, 1910."

2644 Exhibit No. 128.

"Mine Car Lease
between
Coronado Coal Company and Hartford Coal Company

For and in consideration of $1.00 per month per car the Hartford Coal Company hereby leases to the Coronado Coal Company Forty Five (45) mine cars for a period of one (1) year from date. It being understood that the Coronado Coal Company are to keep these cars in repair and return them to the Hartford Coal Company at any time the Hartford Coal Company wishes them and in as good repair as when rented to the Coronado Coal Company.

The Hartford Coal Company shall have the right at any time to demand the return of these cars and the Coronado Coal Company shall return them within 15 days after receiving notice to return the cars in as good repair as when received.

The amount of rental shall be paid on or before the 25th of the month for the proceeding month. In case any car is destroyed while in the possession of the Coronado Coal Company the Coronado Coal Company shall either pay the Hartford Coal Company the cost price of the car or furnish them a car to take its place of the same type and as good as when received.

HARTFORD COAL COMPANY,
By (Signed) H. Denman.

CORONADO COAL COMPANY,
By (Signed) H. Denman.

Midland, Ark, January 3, 1910."

2645 Plaintiff's Exhibit 100.

Lease of Coal Lands.

This Agreement, made this Tenth day of July, A. D. 1905 by and between the American Smokeless Coal Company, a corporation created under the laws of the State of New Jersey, the Midland Valley Railroad Company, a corporation created under the laws of the State of Arkansas, which corporations are hereinafter designated "lessors", of the first part; and the Mammoth Vein Coal Mining Company, a corporation

created under the laws of the State of West Virginia, hereinafter designated "Lessee", of the second part,

Witnesseth:

That, Whereas, the said Lessors have become and are the owners of the coal lands hereinafter described, which they acquired for the purpose of aiding in the construction of the line or railroad of the Lessors, and are interested in giving said line of railroad the tonnage from said coal lands; and,

Whereas, the said Lessors are interested in the largest production of coal and coke from said mines to the end that they may receive the tonnage of the coal mines and the coke manufactured thereon.

Now, Therefore, the parties hereto enter into the following covenants and agreements, to-wit:

First. The said Lessors, for and in consideration of the rents, royalties, covenants and agreements hereinafter mentioned and specified on the part of the said Lessee to be paid and performed have leased, demised and let, and do hereby lease, demise and let, unto the said Lessee for the term of thirty years from the day of August 1905, the following
2646 premises, rights, easements and privileges; that is to say:

Second: The exclusion right to dig for, mine, remove and dispose of the coal in, under and upon the certain tract of land situate in Sebastian County, in the state of Arkansas, and more particularly described as follows:

The Southwest diagonal halves of Lots 8 and 14 ; Lots 3, 10, 11, 12, 13, and 17 of the North ½ of Section 2 and Lots 7 and 14 of the North ½ of Section 3, Township 4 North, Range 32 West, containing 360 acres, be the same more or less.

Third: The right to cut and use, from time to time, for the purpose of the said mining operation, including the construction of such biuldings, roads and structures as may be necessary in the conduct of the same, timber less than twelve (12) inches in diameter, measured four (4) feet from the ground, growing upon that portion of the above described tract of land described as follows:

The Southwest diagonal halves of Lots 8 and 14; Lots 3, 10, 11, 12, 13 and 17 of the North ½ of Section 2 and Lots 7 and 14 of the North ½ of Section 3, Township 4 North, Range 32 West, containing 360 acres, be the same more or less.

Fourth: The right to erect miners' houses, tipples and such other buildings or works, including water supply reservoirs, as may be necessary in the operation of the same mine, and to erect and operate coke ovens upon that portion of the said tract described as follows:

The Southwest diagonal halves of Lots 8 and 14; Lots 3, 10 11, 12, 13, and 17 of the North ½ of Section 2 and Lots 7 and 14 of the North ½ of section 3, Township 4 North, Range 32 West, containing 360 acres, be the same more or less.

2647 Together with right to dig, hew and use, for the purpose of the said mining operations only, such building stone, fire clay and other buildings materials (timber excepted) as may be found upon the said tract of land last above described.

Fifth: The right to use such running water as may be found upon any of the tracts hereby leased, or found upon the sur-fact which covers any of the coal hereby leased, to the extent that the Lessors have the right to use the same: Provided, such use of the said water in no way interfere with its use on other land now owned or which may hereafter be acquired by said Lessors.

Sixth: The said lessors hereby covenant and agrees to and with the said Lessee that it shall and may, at all times hereafter during the continuance of the term hereby granted, peacefully and quietly have, hold possess and enjoy the premises and exercise the rights hereby demised, without let or hindrance by or from the said Lessors or by or from any person or persons lawfully claiming the same or any part thereof by, from or under them.

Seventh: The said Lessors hereby retain and reserve the right, and the Lessee hereby covenants that the said Lessors, shall have the right, by their officers, servants, agents and engineers, at all times to enter into and upon the said premises, both on and below the surface, and to inspect, examine and make surveys thereof; and the said Lessee doth covenant and agree to accurately survey, not less frequently than once in every six months, all new mine workings, entries, air courses slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than two hundred (200)
2648 feet to one (1) inch, and to furnish the Lessors, not less frequently than once in six months, with an accurate copy of said map.

Eighth. The said Lessors further reserve during the continuance of this lease, for themselves and their assigns and

lessees, and any and all of them the right of way over any and every part and portion of the herein demised premises for roads, railways, waterways and side tracks, and also such use as they and any and all of them may desire of all tracks, roads, railways, waterways and side tracks constructed by the said Lessee upon the herein demised premises as provided hereinafter in this paragraph. Provided that proper compensation shall be made by the said Lessors and there assigns and Lessees, and any and all of them, for such use of said tracks, roads, railways, waterways and side tracks constructed by the said Lessee, such proper compensation, if not mutually agreed on, to be determined by arbitration as hereinafter provided.

Ninth: It is expressly understood that one of the purposes of this ease is to secure from the leased land the Maximum proportion of all the coal contained therein; and to accomplish this and, among others, the Lessee expressly agrees to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual mining of the largest amount of coal from the entire premises hereby demised; and for the purpose of assuring this end to the Lessors with greater certainty, the Lessee agrees to maintain in good working order all entries and gangways, air courses, slopes, shafts and planes until the coal between the faces of any of the said entries, gangways, air courses, slopes, shafts or planes and that portion of the boundary of the demised premises towards which any of the said entries,
2649 gangways, air courses, slopes, shafts or planes may be directed is mined out as fully as it can be mined out by first class mining methods, or until the Lessors give their consent in writing to the abandonment of any of the same. And the Lessee agrees to promptly repay and damage that may occur to any of said workings.

It is expressly understood that all workings underground shall be laid out and conducted in a thorough and substantial manner and in accordance with first class mining methods, and expressly with a view to the fullest possible development of the demised premises; and that the Lessee shall maintain pillars in the mine or mines of dimensions fully sufficient to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out.

And it is further expressly agreed that the Lessee shall conduct no stripping operation on the coal beds hereby demised without the written consent of the Lessors being first

had, and that the Lessee shall leave intact at all times a strip of coal fifty yards in breadth next adjoining the (the) boundaries of the demised premises, except where the said strip is penetrated by the principal slope and air course at the outcrop of the coal bed.

That the Lessee shall maintain all buildings and machinery and other appurtenances to the mine in good condition and working order; that it will not do, or permit, or suffer to be done any damage or injury to the said premises, property or appurtenances; that it will so arrange and conduct the said mining operations as to cause no interference either
2650 with the use of the said Lessors of the surface covering the coal hereby leased, excepting that surface hereby demised, or with land of the said Lessors bounding on the tracts of land hereby leased; and that the said mining operations shall not injure or endanger any buildings or structures which the said Lessors now have standing or may hereafter cause to be constructed on the said surface of bounding lands.

The lessee hereby expressly agrees that it will at all times keep the workings of the mines operated by it on the said demised premises free from water and from dangerous gases.

Tenth. The Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the state of Arkansas regulating the mining of coal, and agrees to protect the Lessors against the violation of said laws by said Lessee.

Eleventh. As a part of the consideration for this lease the said Lessee hereby covenants and agrees to assume all liability in the operation of said mine and hereby agrees to protect and save harmless the said Lessors and each of them from any claim, damage, personal injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employes in the operation of said mine.

In consideration of the premises and as an inducement to the said Lessors to make this agreement, and to build said line of railroad and furnish the necessary spurs, side tracks and switches at the tipple of the said Lessee for the accommodation of the Lessee in the handling of its business, said Lessee hereby agrees that the said Lessors, their successors
2651 and assigns, shall not be liable for or on account of any loss or damage which may at any time in any manner arise to the said Lessee or its successors or assigns, by reason of fire communicated to the buildings of said Lessee or its assigns, now erected or hereafter to be erected, or the contents

thereof, or to the property of any kind owned or stored by said Lessee along such side tracks, spurs or switches, by the locomotives, trains or cars of the Lessors, their successors or assigns, or arising in any manner from the operation of such side tracks or switches, and to that end the said Lessee and its assigns, will make no claim against the Lessors, their successors or assigns, for any loss, damage, charge or expense of any kind that may grow out of any fire set or communicated by the locomotives, trains or cars of the Lessors upon or along said railroad, spurs, side tracks or switches.

Twelfth. The said Lessee covenants that it will at the termination of this lease, deliver up and surrender to the said Lessors to be and remain the property of the same, all and singular the premises, rights and privileges herein demised and leased, together with all the mines, entries, (opengins), tramways, inclines, chutes, tipples, tipple houses, cross ties, sleepers, sills and appurtenances whatsoever in good working order and repair; but on such termination of this lease the working tools, and implements used in mining, together with all machinery, miners' houses, engines, fans, boilers, pumps, ropes, weighing scales, rails and pit cars placed upon said premises by the said Lessees shall be and remain the property of the said Lessee. But it is hereby expressly agreed that upon such termination of this lease the said Lessors
2652 shall have the right as regards the said working tools, mining implements, machinery, tracks, pit cars, rails and miners' houses, declared as aforesaid to be the property of the said Lessee, to purchase the same from the said Lessee at a fair market price, to be determined, if not mutually agreed upon, by arbitrators as hereinafter provided for. If the said Lessors shall not avail themselves of such right of purchase, then the said Lesse may remove the same, provided all royalties then due the said Lessors by the said Lessee be paid and all and singular the other covenants and agreements of this lease be performed, such right of removal, however, to terminate ninety (90) days after the termination of said lease.

Thirteenth. The said Lessee further covenants and agrees that it will not at any time during the term of this lease assign, either voluntarily or involuntarily, sub-let or transfer the same or any part thereof, or sublet or demise the said premises or any part thereof, to any person or persons or corporation, whatsoever, without the written consent of the said Lessors, under their seals, first had and obtained, but said Lessee may construct necessary dwellings for its employes upon the tract as aforesaid leased for, in part, that

purpose, and may sublet such dwellings to its employes while they remain in the service of said Lessee.

Fourteenth. The said Lessee agrees to commence to drive a slope toward the premises herein demised within one month of the date hereof and to thereafter continue the driving of said slope to and through the premises herein demised with reasonable expedition.

Fifteenth. The said Lessee hereby covenants and
2653 agrees to pay to the said Lessors a rent or royalty equal to eight cents per ton on each and every ton of two thousand (2000) pounds of coal mined or dug from the demised premises. But the said rent shall amount to not less, during any certain period, than the minimum rental prescribed hereinafter for said period.

The minimum royalty throughout the year commencing January 1st, 1906, shall be Twelve Hundred ($1200) Dollars, and in addition thereto, the Lessee shall pay the Lessors eight cents (8¢) per ton of two thousand (2000) pounds on all coal mined or dug from the demised premises in excess of fifteen thousand (15000) tons, during the said year.

The minimum royalty throughout each and every succeeding year furing the term of this agreement shall be Twenty-Four Hundred ($2400) Dollars, and in additional thereto, the Lessee shall pay to the Lessors eight cents per ton of two (thousand) (2000) pounds on all coal mined or dug from the demised premises in excess of thirty thousand (30,000) tons during any of said years.

Sixteenth. And the said Lessors, if they so (electe), shall have the right to weigh all coal and coke loaded on cars before the same are shipped, and the said Lessee covenants that the said Lessors may so weigh all said coal and coke before shipment, without let or hindrance, from all the operations of the said Lessee; and shall any dispute arise as to the accuracy of the scales on which the coal and coke are weighed either by the said Lessors or the said Lessee, then such dispute shall be (settled) by testing the said scales by government weights.

The said Lessee further covenants and agrees to fur-
2654 nish within five (5) days from the last day of every calendar month, at the office of the Lessors in Fort Smith, Arkansas, a report properly authenticated, showing the coal mined or dug and used or removed from the said mine during the preceding calendar month, and to pay to such person or corporation as said Lessors shall direct the amount of the rent or royalty due for the said preceding month; and if any

coal shall have been taken from the said premises and wasted, or left slack coal in the mines, and not weighed and not accounted for, the quantity of the same shall be ascertained, an account rendered for the same and payment made at the rate above named. And the Lessee covenants that it will keep a book or books of account of the mining and shipping of coal or coke, and that said book or books shall be open to the inspection of said Lessors and their agents and attorneys for the purpose of comparing and verifying the accounts rendered.

Seventeenth. Should the royalty on coal mined in any year not amount to the minimum rental for that year, then the said Lessee covenants and agrees that it will pay to the said Lessors dead rentals so that the same shall equal the minimum rental aforesaid, but the said Lessee shall have the privilege of mining during the next succeeding year, free from royalty, such a quantity of coal over and above the quantity which will yield the said minimum rental for that year, as will in royalties reemburse the said Lessee for the dead rentals paid during the preceeding year.

Eighteenth. The Lessee shall pay royalties or rentals as set out above as follows:

The minimum royalties shall be payable quarterly in
2655 advance, on the first days of January, April, July and October of each year.

The royalties or rentals in excess of one-twelfth (1/12) of the minimum annual royalties or rentals, shall be paid on the 20th day of each calendar month next succeeding that in which the coal was mined, and shall be paid in both cases at the principal office of the Lessors at Fort Smith, Ark.

Nineteenth. The said Lessee covenants and agrees to pay all taxes that may be assessed against the demised premises and the improvements thereon, and upon the coal mined or coke manufactured during the continuance of this lease.

Twentieth. Any difference as to the proper manner of mining or as to the quantity of available coal to be left standing before abandoning any entry, room, shaft, working or other opening, or any difference whatsoever which may arise as to the method of skillfully conducting said mining operation, and any other matter herein specifically referred to arbitrators, shall, upon motion of either party to this lease, be referred for settlement to a board of arbitrators, which shall be constituted and chosen as provided in this paragraph; or should any dispute or disagreement arise between the parties

hereto touching any matter or thing to be done or performed by either hereunder, the same shall be determined by arbitration in the following manner: The party alleging such non-performance or breach by the other shall give ten days' notice in writing to the other party of the appointment of an arbitrator to set hereunder, and thereupon it shall be the duty of the party so notified to appoint within five (5) days an arbitrator to act with the one thus appointed. In the event of a failure to appoint within five (5) days, the other party may appoint one in his or their stead. In the event that the two thus appointed shall fail to agree, they shall select a third party, and in the event of their failure to agree on the selection of such third member, within five (5) days after their failure to agree as to the matter or matters in dispute, the third member may, on application of either party, be appointed by the Judge of the United States Circuit Court for the Western District of Arkansas. The decision of the majority of the three arbitrators when finally settled shall be binding and conclusive upon the parties hereto.

2656

Twenty-first. The said Lessee hereby covenants and agrees to ship all coal and coke mined from or made upon the demised premises to or towards its market or destination by the railroad of the Lessors and such connecting line or lines as the Lessors shall prefer or select for this purpose, an end to more fully effectuate this the said Lessee does hereby grant to the said Lessors and to their successors and assigns, the right to consign or rout all coal and coke so mined and made and delivered to said Lesors for shipment by said Lessee by whatever line or lines or railroad the said Lessor or their successors or assigns, may prefer or select; Provided always, that the said Lessee shall not by such routing be subjected to a higher freight rate on such coal or coke than prevails at the time on any other equally available route; Provided further, that the initial carried for all such coal and coke shall be the said Midland Valley Railroad Company, or its successors or assigns, and the said Lessee covenants and agrees that for every ton of coal or coke shipped otherwise than as herein provided it will pay to said Lessors, their successors or assigns, as liquidated damages, for a breach of contract, the sum of twenty-five (25¢) cents in the case of coal and forty (40¢) in the case of coke.

2657

Twenty-second. The Lessors agree to furnish the Lessee railroad cars at the tipple of the Lessee in sufficient numbers so that the said Lessee shall be able to operate its mine not fewer hours per month than ninety per cent (90%) of the hours per month the mines are operated of any other person

or corporation on the railroad or the lessors, including the mines of the Lessors. Cars of foreign roads shall be held to apply as well as home road cars.

Twenty-third. It is further covenanted and agreed by and between the parties hereto that in the event that the said Lessee shall delay or refuse to comply with the terms of this lease and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessors shall at their option, after sixty (60) days' notice to the Lessee, have the right to re-enter upon the demised premises in as full and complete possession as if the term of this lease were fully performed and ended by limitation.

Twenty-fourth. In the event of such termination of this lease for a breach of contract by the Lessee, the said Lessee shall not have the right to remove from the premises any of the coal which may have been mined previous to such termination of this lease, or working tools, machinery or other property, until the said Lessee has made full satisfaction to the Lessors for any and all damage which they may sustain by reason of such delay or refusal to comply with the terms of this lease, and in that event none of said properties aforesaid shall be removed from said premises until all royalties
2658 and other payments due the Lessors hereunder shall have been paid to the said Lessors; otherwise such coal, tools, machinery and property shall become the property of the said Lessors. And in the event of any controversy arising out of any matter in this paragraph contained, the same shall be referred to the board of arbitrators, as hereinbefore provided, and all said properties shall remain on said premises until a decision is reached by the arbitrators.

Twenty-fifth. It is hereby expressed agreed that nothing herein contained shall interfere with the right on the part of the said Lessors to distrain for rent due and in arrears under the terms of this lease.

Twenty-sixth. It is hereby agreed that all rights vested in the said Lessors by this lease shall pass to and vest in their successors or assigns, and that all covenants and agreements on the part of the said Lessee to be kept and performed shall be kept and performed by the said Lessee and by its heirs, executors, administrators and assigns, or by the successors and assigns of the Lessee if the Lessee is a corporation, for the benefit and advantage of the Lessors and their successors and assigns.

Twenty-seventh. It is hereby agreed that the said Lessee shall keep the said Lessors informed of the place of its offices

and the names of its agents, whether in this state or elsewhere; and that the said Lessor shall keep the said Lessee informed of any change in or transfer of the said Lessors Witness the hands and corporate seals of the parties hereto under this lease.

in duplicate, each as original, the day and date first above written.

2659 MIDLAND VALLEY RAILROAD COMPANY By C. E. Ingersoll, President.

Attest: H. E. Yarnall, Secretary

AMERICAN SMOKELESS COAL COMPANY, By C. E. Ingersoll, President

Attest: H. E. Yarnall, Secretary

MAMMOTH VEIN COAL MINING COMPANY By Heber Denman, President

Attest: R. Gully, Jr., Secretary

(Seal)

Both of said corporations are designated in this contract as "Lessors."

Desig-nated in this contract as "Lessee"

State of Pennsylvania,
County of Philadelphia—ss.

Be it remembered, that on this day, before me, the subscribed, a Notary Public within and for the County and State aforesaid, personally appeared before me, C. E. Ingersoll and H. E. Yarnall, President and Secretary, respectively, of the Midland Valley Railroad Company, a corporation, to me personally well known as such President and Secretary, and acknowledged that they had executed the above and foregoing instrument for and on behalf of the said Company, and as its and their free act and deed for the consideration and pur-

poses therein mentioned and set forth, and I do hereby so certify.

Witness my hand and seal as such Notary Public, this Tenth day of July, 1905.

(Seal) OSCAR H. PRICE,
Notary Public.

My commission expires at the end of the next session of the Senate.

2660 State of Pennsylvania,
County of Philadelphia—ss.

Be it Remembered, that on this day, before me, the Subscriber, a Notary Public within and for the County and State aforesaid, personally appeared before me C. E. Ingersoll and H. E. Yarnall, President and Secretary, respectively, of the American Smokeless Coal Company, a Corporation, to me personally well known as such President and Secretary, and acknowledged that they had executed the above and foregoing instrumnt for and on behalf of the said Company, and as its and their free act and deed for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

Witness my hand and seal as such Notary Public this Tenth day of July, 1905.

(Seal) OSCAR H. PRICE,
Notary Public.

My commission expires at the end of the nevt session of the Senate.

State of Arkansas,
County of Sebastian—ss.

Be It Remembered, That on this day before me, the undersigned, a Notary Public within and for the County and State aforesaid, personally appeared Heber Denman and R. Gulley, Jr., President and Secretary, respectively, of the Mammoth Vein Coal Mining Company, and acknowledged that they had executed the above and foregoing instruments as their free act and deed for the consideration and purpose therein mentioned and set forth and as the free act and deed of
2661 said Company, for the same purpose and consideration, under the authority of their Board of Directors.

. . . . . .
. . . . . .

Witness my hand and notarial seal this, 2 day of Nov. 1905.

(Seal) J. M. B. HARP,
Notary Public.

My commission expires 8/27/07.

2662 Exhibit No. 101.

"Supplement to Lease Dated July 10th, 1905.

This Supplemental Agreement entered into this 19th day of June, A. D. 1909 by and between the Cherokee Construction Company, party of the first part, and the Mammoth Vein Coal Mining Company, party of the second part, Witnesseth:

Whereas on the 10th of July 1905 the American Smokeless Coal Company one of the parties of the first part and the Mammoth Vein Coal Mining Company, party of the second part, entered into a lease of coal land described in said lease.

And Whereas since said date the Cherokee Construction Company has become the owner of all of the interest of the American Smokeless Coal Company under said lands, and in and to the lands described in said lease.

And Whereas the party of the second part herein has paid to the party of the first part herein, the following minimum royalties on said leased lands, namely:

For the year 1906	$1,200.00
For the year 1907	2,400.00
And for the year 1908	2,400.00
Total	$6,000.00

And Whereas it is desired that the party of the second part herein shall have a credit for said payments on future royalties, and to make certain other modifications in said lease,

Now Therefore the parties hereto enter the following covenants and agreements, to-wit:

1. That said Six Thousand Dollars ($6,000.) heretofore paid shall be applied on the future royalties accruing
2663 under said lease, and that on and after July 1st, 1909 the party of the second part is not to pay any more royalties under said lease until the royalties accruing under the terms of said lease shall amount to Six Thousand ($6,000.) and that when said Six Thousand Dollars ($6000.) is thus applied and absorbed, the party of the second part herein shall thereafter pay to the party of the first part herein, the royalties as provided in said lease of date July 10th, 1905.

2. It is further agreed by and between the parties hereto, that the party of the second part herein shall be, and is hereby, permitted to remove or have removed an amount equal to not more than one third of the coal in said leased lands, through what is known as the Hoffman coal mine, said coal to be shipped over the Midland Valley Railroad as initial carrier. It is also agreed that the second party may drive or permit to be driven entries and air courses through the boundary pillars of its lease to the lands of the Hoffman Coal Company and of the Mammoth Vein Coal Company.

Witness the hands and corporate seals of the parties hereto in duplicate, each an original, the day and date first above written.

(Corporate Seal) CHEROKEE CONSTRUCTION COMPANY
Signed (Signature illegible)
By (Signed) C. E. Ingersoll,
Vice President.

(Corporate Seal) MAMMOTH VEIN COAL MINING COMPANY
By (Signed) F. Bache,
President.

Attest:
Heber Denman, Secy.

2664 Exhibit No. 107.

"This Agreement made and entered into this 19th day of December, 1906, by and between the Cherokee Construction Company, a corporation created under the laws of the Territory of Oklahoma, hereinafter designated "Lessor," of the first part, and the Prairie Creek Coal Mining Company, a corporation created under the laws of the State of Arkansas, hereinafter designated "Lessee," of the second part, Witnesseth:

That Whereas, the Lessor is the owner of the following described coal lands situated in Sebastian County, State of Arkansas, to-wit:

Lots one (1), two (2), nine (9), eleven (11) and twelve (12), Section one (1), Lot seven (7) and the Northeast diagonal halves of Lots eight (8) and fourteen (14), Section two (2) all of lots ten (10) except the North two hundred and eighty (280) yards thereof and that part of said lot west of

the Midland Valley Railroad right of way, in Section one (1): all in Township Four (4) North, Range Thirty two (32) West; and three (3) acres, more or less, out of the west side of Lot two (2), Section six (6), Township Four (4) North, Range Thirty-one (31) West, being all of said lot west of James Fork Creek; being three hundred and forty eight and forty eight hundredths (348.48) acres, more or less which the Lessor owns in fee simple;

The North two hundred and eighty (280) yards of Lot ten (10), Section one (1), Township Four (4) North, Range Thirty two (32) West, and that part of said lot west of the Midland Valley Railroad right of way, being twenty-five
2665 and one-tenth (25 1) acres, more or less, in which the Lessor owns the mineral right;

Lots three (3), four (4), five (5), six (6), seven (7), eight (8), thirteen (13) and fourteen (14), Section one (1), Township Four North, Range Thirty two (32) West, being three hundred and thirteen and thirty six hundredths (313.36) acres, more or less, which the Lessor holds under a coal lease for a term of twenty (20) years from May 31, 1900; on which lands are situated Mines Nos. 3 and 4 of the Lessor; and

Whereas, the Lessee desires to lease said coal lands, together with all buildings and machinery situated thereon or therein, including miners' houses, warehouses and all other buildings and improvements thereunto appurtenant;

Now, therefore, the parties hereto enter into the following covenants and agreements, to-wit:

1. The Lessor, for and in consideration of the rents, royalties, covenants and agreements hereinafter mentioned and specified on the part of the Lessee to be paid and performed, has leased, demised and let, and does hereby lease, demise and let unto the said Lessee all of the property above described and all of the rights and privileges of the Lessee in and to all of said property for the term during which the lands hereby leased and demised shall contain coal in sufficient quantities to make it practicable, from a mining point of view, to mine the same, under the terms of this lease, together with certain miners' houses and warehouses situated on said land and upon the South half of the South half of Section thirty one
(31) and the South half of the South half of Section
2666 thirty two (32), Township Five (5) North, Range Thirty one (31) West, including the right to use said miners' houses and warehouses in connection with the mining of coal on said leased premises for the period of this agreement,

a schedule and inventory of all of which property is attached hereto and made a part hereof; Provided that the Lessor reserves the right to remove said miners' houses and other buildings from the land in said Section thirty one (31) and thirty two (32) at any time when it may desire to mine the coal on or under said land, and to move the same to some other convenient place upon the land hereby leased.

2. As a consideration of the said lease, the Lessee covenants and agrees to pay the Lessor a royalty of seventeen and one half (17½) cents per ton on all coal mined from said land and premises, which royalty shall be on the basis of a minimum tonnage and output of one hundred thousand (100,000) tons per year during the term of this lease or until the workable coal is exhausted by ordinary mining methods, as herein provided, This covenant of the Lessee to produce a minimum output of one hundred thousand (100,000) tons per year is conditioned upon the Lessee receiving a sufficient supply of cars to handle such output, after having made all due and proper effort to obtain such car supply and being unable to secure enough cars to handle such output; and in case the car supply apportioned to these mines of the Lessee during any one year shall be insufficient to carry the minimum tonnage for such year, a pro rata shall be made in the minimum tonnage. The obligation, however, to produce this minimum tonnage shall be further subject to abatement in case
2667 there is a general strike in the district where said mines are situated, the abatement from said cause to be apportioned according to the length of said strike.

3. The royalty herein provided for of seventeen and one-half (17½) cents per ton shall be paid upon the minimum tonnage provided for quarterly in advance, and shall be paid within ten days after the beginning of the quarter, and the royalty at the rate of seventeen and one half (17½) cents per ton, on the excess, if any, over said minimum tonnage herein provided for, for any previous quarter, shall be added to the advanced minimum royalty for the next succeeding quarter, and a separate and distinct settlement shall be made for each quarter. Should the amount of coal mined in any one year not amount to the minimum tonnage herein provided for, it is agreed that the Lessee shall have the privilege of mining during the next succeeding year such a quantity of coal in excess of the minimum tonnage required for that year as will make up the deficiency for the previous year without paying any excess royalty thereon for that year.

4. The Lessee covenants and agrees that the mines on said lands shall be worked continuously so far as the general demand for coal warrants; that is to say, that they shall be worked the same as other average mines controlled by the Lessee or by other operators on the line of the Midland Valley Railroad.

5. In the event of coal not being mined up to the minimum in any one year, it is agreed by the Lessor that the Lessee herein shall be allowed to mine free of royalty in the next succeeding year only sufficient coal to make up the
2668 amount of minimum royalty paid in excess of coal mined during the preceding year.

6. The Lessee agrees at the termination of this lease or agreement to return the plant and property pertaining to said mines and leased premises to the Lessor in as good condition as when received, reasonable wear and tear excepted.

7. The Lessee shall have the use of all machinery, material and equipment of all kind now on and in said mines, but shall maintain and renew the same at its own cost and expense, and shall at its own cost and expense provide all new machinery, equipment and material of all kinds and character, and shall bear the whole cost and expense of developing and operating said mines until the same are worked out, as here in provided, and all new machinery, pit cars, steel rails or other equipment paid for and installed by the Lessee shall be its property, and at the expiration of this lease the Lessee shall have the right to remove the same within a reasonable time thereafter.

8. The Lessee is hereby given the privilege of abandoning said Mine No. 3 so far as hoisting coal through the present slope is concerned whenever the workings are connected with those of Mine No. 4, so that the coal mined in said Mine No. 3 can be hoisted through Mine No. 4 shaft, provided the Lessee shall make proper provision to prevent water from said Mine No. 3 coming into the workings of Mine No. 4; Provided, the Lessee shall have the right to handle the water of Mine
2669 No. 3 through Mine No. 4; and in such case whatever machinery or property connected with Mine No. 3 which cannot be utilized by the Lessee in the operation of said mines shall be delivered back to the possession of the Lessor for whatever disposition it may desire to make of the same.

9. The Lessor agrees to keep all insurable property in connection with said mines insured, at the cost, however, of the Lessee, and the Lessee agrees that the Lessor may make bills

upon it for such insurance, which the Lessee agrees to promptly pay; and in case of fire the Lessor agrees to collect the loss from the insurance company or companies, and to pay the same to the Lessee, all of which sums, however, shall be used by the Lessee to replace the property burned or destroyed by such fire.

10. The said Lessee hereby retains and reserves the right and the Lessee hereby covenants that the said Lessor shall have the right, by its officers, servants, agents and engineers, at all times to enter into and upon the said premises, both on and below the surface, and to inspect, examine and make surveys thereof, and the said Lessee doth covenant and agree to accurately survey, not less frequently than once in every six (6) months, all new mine workings, entries, air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than two hundred (200) feet to one (1) inch, and to furnish the Lessor, not less frequently than once in every six (6) months, with an accurate copy of said map.

2670 11. It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all the coal contained therein; and to accomplish this end, among others, the Lessee hereby expressly agrees to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual mining of the largest amount of coal from the entire premises hereby demised, and for the purpose of assuring this end to the Lessor with greater certainty, the Lessee agrees to maintain in good working order all entries and gangways, air courses, slopes, shafts and planes until the coal between the faces of any of the said entries, gangways, air courses, slopes, shafts or planes and that portion of the boundary of the demised premises towards which any of the said entries, gangways, air courses, slopes, shafts or planes may be directed is mined out as fully as it can be mined out by any first class mining methods, or until the Lessor gives its consent in writing to the abandonment of any of the same. And the Lessee agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings under ground shall be laid out and conducted in a thorough and substantial manner and in accordance with the first class mining methods, and expressly with a view of the fullest possible development

of the demised premises; and that the Lessee shall
2671 maintain pillars in the mine or mines of dimensions fully sufficient to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out.

The Lessee shall maintain all buildings and machinery, and other appurtenances to the mines, in good condition and working order, and the Lessee further covenants that it will not do or permit, or suffer to be done, any damage or injury to the said premises, property and appurtenances.

The Lessee hereby expressly agrees that it will at all times keep the workings of the mines operated by it on the said demised premises free from water and from dangerous gases.

12. The said Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the State of Arkansas regulating the mining of coal, and agrees to protect the Lessor against the violation of said laws by said Lessee.

13. As a part of the consideration of this lease the Lessee hereby covenants and agrees to assume all liability in the operation of said mines and hereby agrees to protect and save harmless the said Lessor from any claim, damage, personally injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employes in the operation of said mines and to assume all the legal liability of an independent contractor or operator.

14. The said Lessee further covenants and agrees
2672 that it will not at any time during the term of this lease assign, either voluntarily or involuntarily, sublet or demise the said premises or any part thereof to any person or persons or corporation whatsoever, without the written consent of the said Lessor, under its seal, first had and obtained; but said Lessee may erect necessary dwellings for its employes upon the tract as aforesaid leased for, in part, that purpose, and may sub-let such dwellings to its employes while they remain in the service of said Lessee and may also sublet any of the buildings covered by this lease.

15. And the said Lessor, if it so elects shall have the right to weigh all coal and coke loaded on cars before the same are shipped, and the said Lessee covenants that the said Lessor may so weigh all said coal and coke before shipment, without let or hindrance, from all the operations of the said Lessee; and should any dispute arise as to the accuracy of the scales on which the coal and coke are weighed either by the said Les-

sor or the said Lessee, then such dispute shall be settled by testing said scales by Government weights.

The said Lessee further covenants and agrees to furnish within ten (10) days from the last day of every calendar month, at the office of the Lessor on the form furnished by the Lessor, for that purpose, a report properly authenticated, showing the coal mined or dug and used or removed from the said mines during the preceding calendar month; and if any coal shall have been taken from the said premises and wasted, or left as slack coal in the mines, and not weighed and not accounted for, the quantity of the same shall be ascertained, an account rendered for the same payment made at the
2673 rate above named. And the Lessee covenants that it will keep a book or books of account and correct records of the mining and shipping of coal and coke, and that said book or books and records shall be open to the inspection of said Lessor and their agents or attorneys for the purpose of comparing and verifying the accounts rendered.

16. The said Lessee covenants and agrees to pay all taxes that may be assessed against the demised premises and the improvements thereon and upon the coal mined or coke manufactured during the continuance of this lease, after the year 1906; the Lessor agreeing to pay the taxes for the year 1906.

17. Any difference as to the proper manner of mining or as to the quantity of available coal to be left standing before abandoning any entry, room, shaft, working or other opening, or any difference whatsoever which may arise as to the method of skillfully conducting said mining operations, and any other matter herein specifically referred to arbitrators, or any question arising under this lease or as to the construction thereof, shall, upon motion of either party to this lease, be referred for settlement to a board of arbitrators, which shall be constituted and chosen as provided in this paragraph; or should any dispute or disagreement arise between and parties here to touching any matter or thing to be done and performed by either party hereunder, the same shall be determined by arbitration in the following manner: The party alleging such non-performance or breach by the other or desiring any question hereunder submitted to arbitration shall give ten (10) days' notice in writing to the other party of the
2674 appointment of an arbitrator to act hereunder, and thereupon it shall be the duty of the party so notified to appoint within five (5) days an arbitrator to act with the one thus appointed. In the event of a failure to appoint within five (5) days, the other party may appoint one in his

stead. In the event that the two thus appointed shall fail to agree, they shall select a third party, and in the event of their failure to agree on the selection of such third member, within five (5) days after their failure to agree as to the matter or matters in dispute, the third member may, on application of either party, be appointed by the Judge of the United States Court for the Western District of Arkansas. The decision of the majority of the three arbitrators when finally settled shall be binding and conclusive upon the parties hereto.

18. The said Lessee hereby covenants and agrees to ship all coal and coke mined from or made upon the demised premises to or towards its market or destination by the Midland Valley Railroad and [cush] connecting line or lines as the said Midland Valley Railroad Company shall prefer and select for this purpose, and to more fully effectuate this the said Lessee does hereby grant to the said Lessor, and to its successors and assigns, the right to consign or route all coal and coke so mined and made and delivered to said Midland Valley Railroad Company for shipment by said Lesses by whatever line or lines of railroad the said Railroad Company, or its successors or assigns may prefer to select; Provided Always, that the said Lessee shall not by such routing be subjected to a higher freight rate on such coal or coke than prevails at the time on any other equally available route; Provided Further,
that the initial carrier for all such coal and coke shall
2675 be said Midland Valley Railroad Company, or its successors or assigns, may prefer to select; Provided Always that the said Lessee shall not by such routing be subjected to a higher freight rate on such coal or coke than prevails at the time on any other equally available route; Provided Further, that the initial carrier for all such coal and coke shall be said Midland Valley Railroad Company, or its successors or assigns, and the said Lessee covenants and agrees that for every ton of coal or coke shipped otherwise than as herein provided it will pay to said Midland Valley Railroad Company, its successors or assigns, as liquidated damages, for a breach of contract, the sum of twenty-five (25) cents in the case of coal and forty (40) cents in the case of coke.

19. It is further covenanted and agreed by and between the parties hereto that in the event that the said Lessee shall delay or refuse to comply with the terms of this lease and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessor shall, at its option, after sixty (60) days' notice to the Lessee,

have the right to re-enter upon the demised premises in as full and complete possession as if the term of this lease were fully performed and ended by limitation; and in such case the Lessee shall restore to the Lessor said property in as good condition as it was on the date of this contract, ordinary wear and tear excepted, and shall forfeit to the Lessor, as liquidated damages, whatever machinery, property or improvements have been placed upon said land by the Lessee in the nature of permanent fixtures or that would, under the law, become part of the realty.

2676 20. All of the covenants and agreements, terms and conditions of this lease and contract shall inure to the benefit of, and be binding upon the successors and assigns of the Lessors, and the successors and assigns of the Lessee, and each of them.

21. The royalty herein provided for shall begin January 1, 1907, and the first quarterly payment of the minimum royalty shall be due and payable on that date.

In Witness Whereof, the Lessor and Lessee have caused this instrument to be executed by their proper officers, thereunto duly authorized, and attested by their corporate seals, under authority of their respective Board of Directors, this the day and year first above written.

CHEROKEE CONSTRUCTION COMPANY
By (Signed) C. E. Ingersoll,
(Seal) V President.

Attest:

(Signed) H. E. Yarnell, Secretary.

PRAIRIE CREEK COAL MINING COMPANY,
By (Signed) J. W. M. Boone,
(Seal) President.

Attest:

J. D. Chastain, Secretary "

Commonwealth of Pennsylvania,
County and City of Philadelphia—ss.

Be it remembered, that on this day come before me, the undersigned, a Notary Public, duly commissioned and acting, within and for the said City of Philadelphia, C. E. Ingersoll, Vice President and H. E. Yarnell, Secretary, of the Cherokee

Construction Company, a corporation to me personally well known to be such Vice President and Secretary, and
2677 acknowledged that they had executed the foregoing instrument as such Vice President and Secretary, for and on behalf of said corporation, as its and their free and voluntary act and deed, for the purposes and consideration therein mentioned and set forth.

Witness my hand and notarial seal, this the 22nd day of December, 1906.

(Signed) OSCAR H. PRICE
(Seal) Notary Public

My commission expires: February 2, 1910.

State of Arkansas,
County of Sebastian—ss.

Be it Remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County, T. W. M. Boone and J. D. Chastain, to me personally well known to be the President and Secretary respectively, of the Prairie Creek Coal Mining Company, a corporation. and acknowledged that they had executed the foregoing instrument as such President and Secretary for and on behalf of the said corporation, as its and their free and voluntary act and deed, for the purposes and consideration therein mentioned and set forth, and I do so certify.

Witness my hand and notarial seal, this 19th day of December, 1906.

(Signed) FRANK L. LYMAN.
(Seal) Notary Public

My commission Expires: Oct 9, 1907."

2678 Defendants' Exhibit 15.

Inventory of Equipment at Mines 3, and 4, Leased to the Prairie Creek Coal Mining Company, by the Cherokee Construction Co., under the terms of Lease Dated January 1st, 1907, of which Lease this Inventory is made a Part.

Mine No. 3.(Outside)

1. Slope tipple, including one shaker, screen, one gravity screen with flat top bars, one weigh basket, one rock trestle, one lever coal dump, one Monarch Scale (about 3 tons), one

3′ sheave wheel (Flange broken), one 4′ sheave wheel, one weigh room. Tipple and weigh room roofs not shingled.

Boiler Room.

1 Atlas boiler and stock, size of boiler 6′x21′, with fittings complete to supply steam to pumps, viz: to one pump in boiler room and to pumps in mine under drill hole, to Hoisting engine, fan engine and shaker screen engine.
1 Danville boiler, size 5′x30′ pattern 400, 2-21″ tubes.
This boiler used for water tank (no grate bars)
1 Danville boiler, size 5′x30′ pattern 400, 2-21″ tubes, fitted and connected as an auxilliary to the Atlas boiler.
1 Steam whistle, size 6″x14″.
1 Iron Wheelbarrow
1 No. 2 coal shovel
1 Hoe
1 Slash bar
1 Boiler slack car
1 Telephone and line to Mine 4.
1 Hooker pump #4401, size 5½x3¼x5 (Boiler feed pump) with 326′ of 2″ suction pipe.
18 Feet 1½″ Rubber hose with 10″ brass nozzle.
2679 1 Pair old chai tongs
11 feet chain.

Engine Room

1 Pair Danville Hoisting Engines, and foundations, size of engines 14x18, geared about 1 to 5.
1 Drum 6′ diameter
1 Wire rope, estimated 1400′ size 1″
1 Davy Safety lamp
1 Clanny Safety lamp.
1 Tri square.
1 Old hand saw.
1 1 Quart brass lubricator
1 Telephone (Out of repair and not connected)

Blacksmith Shop.

1 Forge
1 Tuyere Iron
1 Ripley and Bronson Reliable #2 Blower Engine, with steam connections, to fan line.
1 Buffalo Blower #3
1 Anvil (About 130#, old)
1 Pipe Vise
1 Armstrong stock with dies, 1″ x 1½″ and 2″
1 Armstrong tap 1¼″
1 Armstrong tap 1-1/8″

1 Tap 7/8″
1 Tap 3/8″
1 Tap 1″
1 Rod die 7/8″
1 Ditto 1″
1 Ditto 1-1/8″
2680 1 Rod die 1¼″
1 Pipe die, adjustable (1 lever and socket broken)
1 Set dies 1¼″
1 Ditto 1½″
1 Barnes #3 Pipe Cutter
1 Pipe stock and set 3″ dies.
118 Feet old grass rope
1 Snatch block
12 Double sash.

Fan House Equipment.

1 Fan 16′
1 Fan engine 10x18

In Yard.

1 Monarch track scale 38′ long.
4 Axles, 4 wheels, 4 draw bars and 7 binders for pit cars.
1 Nagle engine 7x10 for shaker screen, belt worn out and following fittings missing: 1 oil cup, 1 butterfly stem, 1 nut 1 stud, 4 flange bolts, 1½″, and 1-16″ nipple, 1 bushing 3″x2″, 1 flange 2½″
3 Dirt shovels
2 Perforated sheets 3½′x6′ with 3½ round perforators.
1 Pinch bar.

Pumping Station on Creek South of Mine No. 3.

1 Hooker pump sixe 5-1.2x3-1/2x5, #4388 (1 spool broken
1″ pipe 150′)
1½″ Pipe 21′)
1½″ pipe 159′)
2″ pipe 710′) Steam, suction and discharge lines.
2-1½″ pipe 249′)
3″ pipe 58′)

Buildings at Mine No. 3.

2681 1 Combination boiler and engine house, size 28′x77′, with addition attached 15′ 6″x 48′, walls 14′ shingle roofs.
1 Blacksmith shop, size 52′x24′ 9′ walls, shingle roof; with lean to addition 8′x9′, leaky shingle roof.

1 Stable, 16'x32' 9' walls, shingle roof, with one lean to addition 8x12 and one lean to addition 10'x32', shingle roofs.
1 Fan house 16'x28'
1 R. R. track scale weigh house, 10'x15' 9' walls, shingle roof.
1 Stone Powder Magazine, 14'x16', 9' walls, shingle roof
1 Frame Store building 56'x16' 9' walls, shingle roof in bad condition, window lights all out.
1 Warehouse 48' 6"x26' connected to store. In bad condition window lights all out.

Track Laid on Tipple and In Yard

12 Lb—rail 242 lineal feet.
16 Lb—rail 589 lineal feet
25 Lb—rail 494 lineal feet.
Street car rail, 60 lineal feet
2 Frogs and 2 switches, 25#
2 Frogs and 2 switches, 16#

Pit Cars in Yard

35 Pit cars.

Condition of Pit Cars (Outside)

1 Car minus 3 wheels, body spread and axle strap broken.
1 Car minus oil box cap, body spread and side board broken.
1 Car minus spread and top board broken.
2682 1 Car minus 4 wheels and end broken and minus 1 end iron.
1 Car minus 4 wheels end broken and minus 1 end iron.
1 Car minus 1 wheel.
1 car minus rear cross iron and one end
1 Car minus 2 oil caps, one end broken and one side broken
1 Car minus 4 wheels, one draw bar and one end.
1 Car minus one oil cap
1 Car minus one wheel, one side spread and one board broken
1 Car minus two wheels and one draw bar
1 Car one side broken
1 Car minus four wheels, sides spread
1 Car side broken, one end broken and sides spread
1 Car minus 3 wheels and one end broken
1 Car minus 1 oil cap, spread and one side broken
1 Car minus 1 oil cap and end broken.
1 Car bottom broken
1 Car minus one oil cap and spread
1 Car minus one oil cap, spread and side broken
1 Car minus bottom broken and spread
1 Car minus 2 oil caps, end broken and draw bar bent

1 Car minus 1 end broken
1 Car spread.
1 Car minus one oil cap and one end broken
8 Cars O. K.
1 Car minus 1 wheel and 2 oil caps.

Mine No. 3 (Inside)

Pumps.

1 Knowles pump No. #42725-6 (Duplex) size 7½x4½x6. water end worn out. Steam and apparently O K ex-
2683 cepting stuffing box broken. Pump not in use.

1 Singe pulling pump #8, size 12x7x14. Valve seat casting worn so that valve seats won't fit. Pump not in use.

1 Duplex Worthington Pump #154411, size 10x6x10. in rod worn out. Upper and lower rocker arms badly worn pump in use.

1 Steam end to Hooker pump #4080, size 7½x4½x10. Apparently in fair condition, excepting valve stem link broken.

1 Knowles Pump #43252-3, size 7½x4½x6. This pump is in fair condition, except rocker arms and valve stems badly worn. Pump in use.

Fairbanks-Morse Pump #7333, size 6x4x6. This pump had been submerged for three months and has not been put in commission since, is out of repair.

Pipe in Mine.

Including steam, suction and discharge from mouth of slope to pumping station (Inside) thence to sump and surface at drill hole.

¾" pipe 24'
1¼" pipe 40'
1½" pipe 129'
2" pipe 1354'
3" pipe 349'

Miscellaneous.

1 Detroit Lubricator (brass)
1 Ladle. 1 quart.
50# Old Brass pump rods.
6 worn out water ends.

2684 Pit Cars Inside Mine.

7 Cars on double parting in 4th West Entry, two of which cars are apparently in good condition. The other 5 are in a badly damaged condition account of falls.

3 Cars in 4th East Entry, in bad condition.

3 Cars on double parting in 3rd West Entry apparently in good condition.

3 Cars in 3rd East Entry (2 on partings and 1 on entry) All badly injured by falls.

2 Cars on double parting in 2nd West Entry damaged by falls. This makes a total of 18 cars visible in this mine.

16 additional cars are said to be in different entries, but could not be reached on account of falls.

Condition of Slope And Entries and Estimated Amount of T Iron and Street Car Ry. Iron Said To Be In This Mine, A Very Small Part Of Which Iron Was visible When Inventory Was Being Taken. Same Being Mostly Covered By Falls of Rock.

Main Slope:

515 Lineal feet street car iron track.

360 Lineal feet 25# T Iron track

5 Slope frogs and switches Almost the entire length of slope is covered by falls of rock. Very little of the track is visible.

Fourth West Entry.

This entry is driven 230 feet from slope to face, double parting made and the track rails that are visible on parting are 25#. Entry said to have 200 feet of 16# iron track, mostly covered by falls, but falls not heavy 4 rooms are turned on this entry and said to contain switches.

2685 3 loose rails, each 20 feet long, 25# iron lying partly covered on parting.

Fourth East Entry.

This entry is driven 289 feet from slope to face, has 5 rooms turned into each of which is laid a room switch.

Double parting 106 feet long, laid with 25# rails.

Main entry 183 feet of 15# iron track.

This entry is in a fairly good condition and has few falls on its entire length.

Third West Entry.

This entry is said to be 925 feet long and to contain 900 feet of 16# iron track, excepting double parting at slope, which latter is said to be laid with 25# iron rails. Entry said to contain 19 room switches.

Entire length of entry covered by large fall of rock and by water and track is invisible. This entry is in a very bad condition.

Third East Entry.

This entry is driven 1125 feet, and is said to have 1100 feet of # iron track therein, all of which is covered by heavy falls of rock. This entry is in a very bad shape.

Second West Entry.

This entry is driven to boundary line and is said to contain 1700 feet of iron track. Entire length of entry covered by falls of rock and by water. Track invisible.

Mine No. 4 (Outside)

1 Shaft tipple, including one gravity screen 6′ x 16′ (flat top bars), one double wooden shaker screen with perforated sheets, various sized perforations, and loose flat sheets
2686 to perforations.

1 Weigh basket with steam piston for operating door, 1 picking table with shed (size of picking table 26′ x 4′)
1 chute for domestic coal with 18 diamond top bars 5′ long and 1 pair Goose neck dumps made of 16# rails, 2-6′ sheave wheels. One pair of self dumping cages (cages in bad condition). One dirt dump with trestle.
1 Ottumwa box car loader, #63, apparently complete.
1 Small picking table engine, size about 6 x 12 (no name)
1 Weigh room on tipple
1 Pair Monarch scales, capacity about 4 tons
1 Steam radiator, 2′ 3′ 9 double flues.
1 Shaker engine mfd. by West Engine Co., Morristown, Pa. (about 16″ strokes)

Engine Room.

1 Pair Litchfield first motion hoisting engines, size 18 x 32
1 Drum, 6′ diameter
950 Feet wire hoisting rope, 1-⅛″ in good condition
1 Lubricator (senior)
1 Full signal bell, 4″, with wire to bottom of shaft.

Boiler Room

Cresent boilers, pattern No. 30, size 5′ x 28′ with 2-19″ flues in each, complete, with stacks and fittings to supply steam to hoisting engines, shaker eingine, box car loader, picking table, engine, radiators, weigh basket, pumps at bottom of shaft and feed pump in boiler room.

Grate bafs under No. 1 boiler not in good condition.
Both boiler fronts are broken and stone setting spread in front.

1 No. 2 coal shovel
2687 1 Hoe
1 Slash Bar
1 Hook.
1 Iron Wheelbarrow
1 Radiator, Size 2′ x 3-1.2″, with 10 double flues (not in use)
11 Testweights 50#
1 Boiler Slack car.
24 Feet Rubber waterhouse 1-½″
1 Garner duplex feed pump, #8663, size 6x4x6, with suction line to small line near boiler house.
1 Hancock Inspirator.
2 Pairs old chain tongs.
1 old 18″ Stillson wrench.
2 Pairs old Blacksmith tongs.
1 Small stock with dies ½″ ¾″ and 1″
1 Small stock with dies ⅝″
1 Small whistle stock for box car loader.
1 Squirt gun oiler.
1 Telephone and line from No. 4 boiler house to the MV R. R.
1 Wild Cat Whistle (Disconnected)

In Yard

Pit Cars.

32 Large pit cars.
15 Medium sized pit cars
4 Small sized pit cars
34 Small sized pit cars leased to the Mammoth Vein Coal Coal Co.

Condition of Pit Cars.

1 Small car front binder issing, and needs all new wood work.
1 Small car, spread.
2688 1 Medium car, 1 cap off, bottom and sides broken.
1 " " 4 caps car spread
1 Medium car, spread
1 " " 1 cap off, door broken
1 " " 1 " "
1 " " 1 door broken.
1 " " 1 cap off, front door off.
1 " " 2 caps off, 2 top boards off, sides, both ends out.
1 Medium car spread and end out
2 Medium car all ends out

1 " " 1 end out and top board off 1 side
1 " " 1 end out and 1 wheel broken
1 Large car, 1 cap off.
1 " " 1 cap off draw bar loose.
1 " " 1 cap off 1 top side board broken.
1 " " 1 door and 1 end broken
1 " " 1 door broken
1 " " 3 axles off and dour broken
1 " " 3 wheels off.
1 " " 1 wheel off, 1 oil cap off, both ends broken.
1 " " 1 door and bottom broken.
1 " " 2 wheels off, both ends and bottom broken.
1 " " 4 caps off.
1 " " 1 door out and 1 end broken
1 " " 1 door missing.
1 " " 1 door broken, 1 cap off and spread
1 " " 1 door missing and spread.
1 " " 4 caps off and 1 door broken and spread.
16 " " ends all gone, top boards off sides cars dismantled, ostensibly for the purpose of remodeling.

2689 Oil House.

150 Feet grass rope, 1-½"
5 mule collars.
3 Sets pit harness complete except tail chains.
1 Brass hose coupling, 4"
1 Brass hose coupling 2".

Pipe Line from No. 4 Slope.
To No. 3 Mine and to No. 4 Shaft.

4130 feet 2" pipe, most of which is covered in ground.
Pipe Line from James Fork Creek to No. 4 Slope.
2800 feet 3" pipe all of which is underground and invisible.

Mine Rails Outside.

12# iron rails, 230 lineal feet
16# iron rails 396 lineal feet
25# iron rails 40 lineal feet
2 Goose necks 12#
2 Goose necks 20#
1 Switch and frog 16#
1 Switch and frog 12#

Blacksmith Shop.

1 Cobb upright engine 8" stroke, belt worn out
1 Boynton and Hummer drill press, combination hand and power.
20 Assorted drills.

1 Boiler iron circular forge.
1 14" grindstone in frame
1 Mounted emory wheels, 1-¼" x 10"
1 Pipe stock with ½" dies
1 Bench vise, 6"
1 Pulley block 6"
1 Adjustable iron rest.
2690 36 Oil caps for pit cars.

Yard.

1 Old sheave wheel 6-½"diameter
3 " " " 5 feet
1 Perforated sheet, size 3' x 6½' with ¾" x 1½" holes
1 " " 2' x 8' " 3" x 4" "
1 " " 2' x 8' " 3½"x5" "
2 Dollies, 4" x 14" with 4" rollers.
1 Set Monarch R. R. Track scales 42' long (platform and outside casing rotted)
1 Sight feed oilcup
1 Hose strainer 2"
4 Stud bolts, ¾" x 5"
75 Pounds scrap brass.
1 16' fan with blades, 24 braces and fan engine complete, except eccentric and connecting rod. (This fan and engine lying below tipple, alongside R. R. with dirt washed over part.)
1 R. R. truck push car.
5 Pit car axles with wheels.

Slope of Mine No. 4

Boiler House.

1 John O'Brien boiler, size 6'x18' with 70-4" flues, and stack. Boiler in good condition, and with fittings complete to supply steam to fan and hoisting engines.

1 Penberthy injector #276481.
1 Hancock Inspirator.
1 Erie City Iron Works Boiler size 2½'x11' 26-3" flues. Stack rusted out.
2691 1 Poker
1 Slash Bar

Engine Room.

1 Pair second motion hoisting engines, mfd by Murray Iron Works. Size 12" x 12". Geared about 5½ to 1. (¼" elbow for Steam pipe missing.)

1 Drum 4′ with friction brake.
2000 feet wire rope, 1″, for slope, old and badly worn.

Yard.

1 Pond (Cen. of dam washed
1 Oil Boilersheel, size 9½′ x 4½′
1 Comb boiler and fire box 2′ 3″ x 6′ 24-3″ flues, no fittings, grate bars, nor stack.
2 Sheave wheels, 24″

Buildings at No. 4 Shaft.

1 Boiler room, size 28′ x 54′, 12′ walls, shingle roof.
1 Engine room, size 22′ x 30′, 16′ walls shingle roof.
1 Box car loader, shed size 18′ x 18′, 12′ walls, shingle roof.
1 Blacksmith shop, size 24′ x 48′, 12″ walls, shingle roof needs covering.
1 R. R. Track scale weigh room size 6′ x 8′, 7′ walls, shingle roof.
1 Supply house size 14′ x 14′, 12′ walls, sealed rough, shingle roof. Contains 5 windows, of which 1 sash and half the lights are missing.
1 Oil house, size 14′ x 14′, 19′ walls, shingle roof.

Buildings at No. 4 Slope.

1 Boiler room, size 37′ x 26′, 10′ walls, shingle roof.
1 Shed attached size 7′ x 18′ board roof.
2692 1 Engine room size 14′ x 18′ 8′ walls, shingle roof.
1 Fan house size 16½′ x 35′ 24′ walls, shingle roof
1 Addition " 6′ x 18′, 10′ walls, shingle roof

(Fan engine room)

Fan House Equipment at No. 4 Slope.

1 Crawford and McCrimmon Fan size 7′ x 20′
1 " " " Horizontal fan engine, size 12x24.
I Lubricator, 1 quart.

Pumping Station of James Fort Creek.

1 Chandler and Taylor, "Phoenix" comb boiler and fire box size 2½′ x 12 with 44 2½″ flues 8′ long. No stack. Fitted to supply steam to pump in boiler house.
1 Fairbanks inspirator.
38′ 4″ suction pipe
1 Boiler house, size 14′ x 22′, 10′ walls, board roof (part 1 and out)
1 Slack chute for boiler coal 1′ x 2½′ 60′ long.
1 Coal bin at top of chute 2″ x 5′ x 20′

Mine No. 4 (Inside)

5489 Lineal feet 16# rails (Iron)
261 Lineal feet 20# rails (Iron)
8124 Lineal feet 25# rails (Iron)
51 room switches and frogs 16#
3 room switches and frogs 25#
2 Diamonds, each 21 ft. long.
5 switch points 16#
1 Frog 16#
5 plate frogs and switches and stands on slope
15 Entry switches and frogs
2693 10 mining cars, small, O. K.
1 Mine car, Large, door broken, 1 cap off.
1 Worthington pump #38541, size 12 x 7 x 10
1 Worthington pump #156670 size 9 x 5¼ x 10
1 Plunger rod for pump, 38541
1 Casing for pump 38541
1 Hand saw, 1 tie fork, 1 crimper minus bar
1 Squirt gun oiler.
1 2 room house located N. E. of Prairie Creek Depot. Not painted. 3 sash broken.
1 2 room house located S. W. of Prairie Creek Depot. 1 room board. 1 room log. Not painted. 1 window light broken. Kitchen needs recovering.
1 2 room shack located 675′ south of No. 4 shaft no. flue 6′ walls, shingle roof. House in general bad order.

No. 3 Camp.

House No. 101-3 room. Painted O. K.

House No. 102-3 room 3 lights broken
" " 103-3 room 4 lights broken, Floor in 2 rooms broken.
" " 104-3 room Painted O. K. 3 lights broken
" " 105-3 room " " " 1 Dbl Sash broken
" " 106-3 room " 1 " " missing
" " 107-3 room " 2 " " 1 floor
" " 108-4 room " 2 " "
" " 109-3 room " 1 " "
" " 110-4 room " 1 " "
" " 111-3 room " 3 " "
" " 112-4 room " 1 single sash out

2694

House No. 113-3 room Painted O. K.
" " 114-4 room " "
" " 115-3 room " " 35 lights broken 1 sash 1 know
" " 116-4 room " " 35 lights broken and lock gone
" " 117-4 room Old farm house, part log, in generally tumble down condition.
" " 118-3 room Painted 2 lights broken. ½ sash, 1 door panel and 2 knobs gone
" " 119-2 room painted 6 lights broken, 1 door broken
" " 120-3 room Painted (partly)
" " 121-3 room not painted 3 shingle sash gone
" " 122-3 room painted
" " 123-3 " "
" " 124-3 " "
" " 125-3 " " 2 lights broken 6 single sash gone
" " 155-3 room not painted 1 single sash broken
" " 156-3 " " "
" " 157-3 " " "
" " 158-3 " " " 1 door panel broken
" " 159-3 " " "

No. 4 Camp.

House No. 126-3 painted 31 lights broken, 2 sash broken 2 knobs gone.
" " 127-3 " 2 lights broken, 4 sash missing
" " 128-3 " 8 lights broken, 4 sash missing
" " 129-3 " 2 lights broken
" " 130-4 " 7 lights broken, 11 sash missing
" " 131-4 " 26 lights broken 2 sash 1 knob missing
" " 132-4 " 33 lights broken, 2 sash missing 1 knob missing 1 door panel gone
" " 133-4 " 20 lights broken, 3 sash missing 1 knob gone

2695

House No. 134-3 room painted 12 lights broken 6 sash missing
" " 135-3 " " 5 " "
" " 136-3 room not " 25 " "
" " 137-3 " " 18 " " 6 " "

" " 138-3 " " 10 " " 5 " " 1 lock, 2 knobs gone
" " 139-3 " " 2 lights broken, 1 lock, 1 knob gone
" " 140-3 room Not painted, 25 lights broken, 1 sash gone
" " 141-3 room " " 10 lights broken 6 sash gone
" " 142-4 room " " 6 " "
" " 143-4 room " " 14 " " (10"x28" glass)
" " 144-2 story, 4 rooms, with one story kitchen addition having 2 small store rooms attached. This is an old farm house and is marked #125 have 20 lights broken and in generally bad repair
House No. 145-4 room Painted. 4 lights broken
" " 146-3 room Not Painted 16 lights broken 2 sash missing
" " 147-3 room " 1 " "
" " 148-3 room Not Painted 3 " "
" " 149-3 room part painted
" " 150-3 room not painted 1 " "
" " 151-3 " 4 " "
" " 152-4 room Not painted 3 " "
" " 153-13 room " 27 " " 2 sash missing back Porch rotted.
(2 story boarding house)
1 wash house, 1 room, size 14' x 20' 10' walls, shingle roof, brick flue, 3 lights and 1 sash missing.
1-2 room house with small shed room attached, located immediately behind house. No. 136. 6 lights and floor in shed room broken.

2696 We, the undersigned, hereby certify that the foregoing inventory of equipment at Mines 3 and 4 of the Cherokee Construction Co., on January first, 1907 is correct.

JAS. P. GALLAGER,
Appraiser for Cherokee Construction Co.

JAS. P. HOYE,
Appraiser for the Prairie Creek Coal Mining Co.

2697 Exhibit 105.

"New Lease Between Cherokee Construction Company and Prairie Creek Coal Mining Company.

This Agreement made and entered into as of date July 1st, 1909 between the Cherokee Construction Company, a corporation created under the laws of the Territory of Oklahoma (now State) hereinafter designated "Lessor" of the first part and the Prairie Creek Coal Mining Company, a corporation created under the Laws of the State of Arkansas, hereinafter designated Lessee" of the second part.

That, Whereas, the Lessor is the owner of the following described coal lands situated in Sebastian County, State of Arkansas, to-wit:

Lots one (1), two (2), nine (9), eleven (11) and twelve (12) Section one (1); Lot seven (7) and the Northeast diagonal halves of Lots eight (8) and fourteen (14), Section two (2); all of Lot ten (10) except the North two hundred and eighty years (280) thereof and that part of said lot West of the Midland Valley Railroad right of way in Section one (1) all in Township four (4) North, range thirty-two (32) West; and three (3) acres, more or less, out of the West side of Lot two (2) Section (6) Township four (4) North Range Thirty-one (31) West being all of said lot West of James Fork Creek; being three hundred and forty-eight Hundredthes (348138) acres more or less, which the lessor owns in fee simple;

2698 The North teo hundred and eighty (280) yards of lot ten (10) Section One (1), Township four (4) North, Tange thirty-two (32) West and that part of said lots West of the Midland Valley Railroad right of way, being twenty-five and one-tenth (25.1) acres, mor or less, in which the Lessor owns the mineral right;

Lots three (3), four (4) five (5) six (6) seven (7) eight (8), thirteen (13) and fourteen (14), Section one (1) Township four (4) North, Range thirty-two (32) West, beginning three hundred and thirteen and twenty-six hundredth (313.36) acres, more or less which the Lessor holds under a coal lease for a term of twenty years from May 31, 1900; on which lands are situated Mines Nos. 3 and 4 of the Lessor; and

Thereas The Lessee desires to lease said coal lands, together with all buildings and machinery situated thereon or therein, including miners' houses, warehouses and all other buildings and improvements thereunto appurtenant;

Now, Therefore, the parties hereto enter into the following covenants and agreements to-wit;

1. The Lessor, for and in consideration of the rents royalties, covenants and agreements herein mentioned and specified on the part of the Lessee to be paid and performed has leased, demised and let, and does hereby lease, demise and let unto the said Lessee all of the property above described and all of the rights and privileges of the Lessor in and to all of said property for the term of thirty (30) years from July 1st,
2699 1909, except as to that portion of the land above described which the Lessor holds under lease expiring May 31st, 1920, together with certain miners' houses and warehouses situated on said land and upon the South half of the South half of Section thirty-one (31) and the South half of the South half of Section thirty-two (32), Township five (5) North, Range thirty-one (31) West including the right to use said miners' houses and warehouses in connection with the mining of coal on said leased premises for the period of this agreement, a schedule and inventory of all the mine equipment and other property covered by this lease, which is to be returned by the Lessee upon the termination of this lease, which inventory is dated January 11, 1907, and is attached hereto and marked "Exhibit A" and made a part hereof. Provided, that the Lessor reserves the right to remove said miners' houses and other buildings from the land in said section thirty-one (31) and thirty-two (32) at any time when it may desire to mine the coal on or under said land and to move the same to some other convenient place upon the land hereby leased.

2. As a consideration for the said lease, the said Leases hereby covenants and agrees to pay to the said Lessor a rent or royalty equal to seventeen and one half cents (17½) per ton on each and every ton of two thousand (2000) pounds of coal mined or dug from any of the demised premises; provided that the said rent or royalty shall amount to not less during any one year than the minimum prescribed herein-
2700 after for said period. Said minimum royalty shall be based upon an annual minimum production of fifty-five thousand (55,000) tons at seventeen and one-half (17½¢) per ton.

The minimum royalty for the year commencing July 1st 1909, and for each and every year thereafter during the period of this lease, shall be nine thousand six hundred and twenty five dollars ($9,625) payable in quarterly payments in advance, each quarterly payments being Two thousand four

hundred and six and 25/100 dollars ($2,406.25). The first payment to be made July 1st, 1909, and the other payments shall be due on the First day of each quarter thereafter, and shall be payable not later than ten (10) days from the beginning of each quarter. The obligation, however, to produce this minimum tonnage shall be subject to abatement in case there is a general strike in the district where said mines are situated, the abatement from said cause to be apportioned according to the length of said strike.

The lessee also agrees to pay to the Lessor seventeen and one-half cents (17½c) per ton of two thousand (2000) pounds on all coal mined or dug from the demised premises in excess of said fifty-five thousand (55,000) tons during each and every year for the period of this lease. The amount of royalty on such excess production for any one year during the period of this lease, at the rate of seventeen and one-
2701 half cents (17½c) per ton shall be due on the First of the second quarter of the next succeeding year, and shall be payable by the Lessee to the Lessor within ten (10) days after the first of such quarter; Provided, That the last payment of royalty for such excess production, is any, shall be made within three (3) months after the thirty (30) year period of this lease. Should the amount of coal mined in any one year not amount to the minimum tonnage of fifty-five (55,000) tons herein provided for, it is agreed that the Lessee shall have the privilege of mining, free of royalty during the next succeeding year, such excess of said fifty-five thousand (55,000) tons as will make up the the deficiency for the previous year, it being the intent of the party to this lease that the royalty on the minimum tonnage provided for shall be paid quarterly in advance at the beginning of each and every quarter of each and every year during the life of this lease, and that the settlement for deficiency or excess tonnage under or over the minimum tonnage shall be made the subject of a separate and distinct settlement.

It is further agreed by and between the parties hereto that the total production by the Lesse from the demised premises during the first ten (10) years of this lease shall not be less than the total production from Mine No. 1 of the Mammoth Vein Coal Company of Sebastian County, Arkansas, during the same period, and that if the production from the said Mammoth Vein Coal Company's Mine No. 1 shall for
2702 any one year during said ten (10) years exceed the production from the premises hereby demised, then and in that case the Lessor shall give the Lessee notice of such

excess production and if at the end of the next succeeding year there shall still be an excess production by said Mine No. 1 over that from the demised premises, counting from the date of this lease, the Lessee shall pay to the Lessor Seventeen and one-half (17½c) cents per ton upon one-half of such excess production, provided that it at the end of the next succeeding year, after such payment the total production from the demised premises shall equal or exceed the production from said Mine No. 1 counting from the date of this lease, then the Lessor shall give the Lessee credit for such payment on the next accruing royalties.

3. The Lessee covenants and agrees that the mines on said land shall be worked continuously so far as the general demand for coal warrants; that is to say that they shall be worked the same as other average mines controlled by the Lessee or by other operators on the line of the Midland Valley Railroad.

4. The Lessee agrees at the termination of this lease or agreement to return the plant and property pertaining to said mines and leased premises to the Lessor in as good condition as when received, reasonable wear and tear excepted.

2703 5. The Lessee shall have the use of all machinery, material and equipment of all kind now on and in said mines, but shall maintain and renew the same at its own cost and expense and shall at its own cost and expense provide all new machinery and equipment of all kinds and character and shall bear the whole cost and expense of developing and operating said mines during the life of this lease, as herein provided and all new machinery, pit cars steel rails or other equipment paid for and installed by the Lessee shall be its property, and at the expiration of this lease the Lessee shall have the right to remove the same within a reasonable time thereafter.

6. The Lessee is hereby given the privilege of abandoning said Mine No. 3 so far as hoisting coal through the present slope is concerned whenever the workings are connected with those of Mine No. 4, so that the coal mined in said mine No. 3 can be hoisted through Mine No. 4 shaft, provided the Lessee shall make proper provision to prevent water from said Mine No. 3 coming into the workings of Mine No. 4, provided the Lessee shall have the right to handle the water of Mine No. 3 through Mine No. 4; and in such case whatever machinery or property connected with Mine No. 3 which cannot be utilized

by the Lessee in the operation of said mines shall be delivered back to the possession of the Lessor for whatever disposition it may desire to make of the same.

7. The Lessor agrees to keep all insurable property in connection with said mines insured, at the cost, however,
2704 of the Lessee, and the Lessee agrees that the Lessor may make bills upon it for such insurance, which the Lessee agrees to promptly pay; and in case of fire the Lessor agrees to collect the loss from the insurance company or companies, and to pay the same to the Lessee, all of which sums, however, shall be used by the Lessee to replace the property burned or destroyed by such fire.

8. The said Lessee hereby retains and reserves the right and the Lessee hereby covenants that the said Lessor shall have the right by its officers, servants, agents and engineers at all times to enter into and upon the said premises, both on and below the surface and to inspect, examine and make surveys thereof and the said Lessee doth covenant and agree to accurately survey not less frequently than once in every six (6) months, all new mine workings, entries, air courses, slopes, planes, shafts and rooms and to plat the same on a map to a scale not less than two hundred feet to one inch, and to furnish the Lessor not less frequently than once in every six (6) months, with an accurate copy of said map.

9. It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all the coal contained therein and to accomplish this end, among others, the Lessee hereby expressly agrees to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual mining of the largest amount of coal from the entire
2705 premises hereby demised, and for the purpose of assuring this end to the Lessor with greater certainty, the Lessee agrees to maintain in good working order all entries and gangways, air courses, slopes, shafts and planes until the coal between the faces of any of the said entries gangways, air courses, slopes, shafts or plane and that portion of the boundary of the demised premises towards which any of the said entries, gangways, air courses, slopes, shafts or plane may be directed is mined out as fully as it can be mined out by any first class mining methods or until the Lessor gives its consent in writing to the abandonment of any of the same. And the Lessee agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings underground shall be laid out and conducted in a thorough and substantial manner and in accordance with first class mining methods, and expressly with a view to the fullest possible development of the demised premises, and that the Lessee shall maintain pillars in the mine or mines of dimensions fully sufficient to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out.

The Lessee shall maintain all buildings and machinery and other appurtenances to the mines, in good condition and working order, and the Lessee further covenants that it will not do or permit, or suffer to be done, any damage or injury to the said premises, property and appurtenances.

2706 The Lessee hereby expressly agrees that it will at all times keep the workings of the mines operated by it on the said premises free from water and from dangerous gases.

10. The Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the State of Arkansas regulating the mining of coal, and agrees to protect the Lessor against the violation of said laws by said Lessee.

11. As a part of the consideration of this lease the Lessee hereby covenants and agrees to assume all liabiliies in the operation of said mines and hereby agrees to protect and save harmless the said Lessor from any claim, damage, personal injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employes in the operation of said mines and to assume all the legal liability of an independent contractor or operator.

12. The said Lessee further covenants and agrees that it will not at any time during the term of this lease assign, either voluntarily or involuntarily, sub-let or demise the said premises or any part thereof without the written consent of the said Lessors, under its seal, first had and obtained; but said Lessor may erect necessary dwellings for its employes upon the tract as aforesaid leased for, in part, that purpose, and many sub-let such dwellings to its employes while

2707 Exhibit 129.

Contract

Made and entered into this 1st day of December, 1911, by and between the Kali-Inla Coal Company, party of the first part and the Prairie Creek Coal Mining Company, party of the Second part.

Witnesseth: That for and in consideration of $8.75 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

13¼ tons steel rails located at Mine #4.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, these steel rails shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from their present location at No. 4 mine and they shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

2708 In case the party of the second part ceases to use the property or machinery for a period of four consecutive months the party of the first part at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 1st day of December, 1911.

KALI-INLA COAL COMPANY,
By C. H. Finley, Sec'y.

PRAIRIE CREEK COAL
MINING CO.
By H. Denman, Vice-Pres.

2709 Exhibit 130.

Contract.

Made and entered into this 31st day of July, 1911, by and between the Kali-Inda Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part,

Witnesseth: That for and in consideration of $8.78 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One Lead Lined Pump bought of Crawford & McCrimmon Company during the month of July, 1911, $625.00 plus freight $77 28.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this pump shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made us of to or by any other individual or corporation without the written consent of the party of
2710 the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 31st day of July, 1911.

KALI-INLA COAL COMPANY,
By H. D. Denman.

PRAIRIE CREEK COAL
MINING CO.
By F. Bache, Pres.

2711 Exhibit 131.

Contract.

Made and entered into this 1st day of February 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the Second part.

Witnesseth:—

That for and in consideration of $4.80 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One Pipe Machine.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this pipe machine shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at No. 4 Mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made us of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property
2712 shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which is was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

[This lease may be extended at the end of the lease period at the option of the party of the first part.]

Witness:

Our hands and seals this 31st day of February 1913.

KALI-INLA COAL COMPANY,
By H. Denman, V. Pres.

PRAIRIE CREEK COAL MINING CO.

By

2713 Exhibit 132

Contract.

Made and entered into this 31st day of May, 1911, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, part of the second part.

Witnesseth:

That for and in consideration of $2.50 a month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One vertical boiler of about 25 horse power bought of Quinley & Peal., for $200.00.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the value of the machinery.

At the expiration of this lease, this boiler shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of
2714 the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 31st day of May, 1911.

KALI-INLA COAL COMPANY
By H. Denman, Secy and Treas.

PRAIRIE CREEK COAL MINING CO.
By F. Bache, Pres.

2715

Exhibit 133.

Contract

Made and entered into this 1st day of December 1912, by and between the Kali-Inla Coal Company, party of the first part and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:—

That for and in consideration of $3.00 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the days of this lease the following described property:

One Wooden Tank.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the property.

At the expiration of this lease, this wooden tank shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at No. 4 Mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first

part being first obtained and the title of this property
2716 shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness our hands and seals this 1st day of December 1912.

KALI-INLA COAL COMPANY
By H. Denman, V Pres.

PRAIRIE CREEK COAL MINING CO.
By

2717 Exhibit 134.

Contract

Made and entered into this 1st day of February 1914, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:—

That for and in consideration of $25.33 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One Sullivan A. C. Right Hand Electric Chain Machine complete with regular equipment, brought from the Sullivan Machinery Company in November 1913 for $1900.00.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whotsoever, the party

of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this machine shall be returned to the party of the first part by the party of second party to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at No. 4 Mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of the to or by any other indi-
2718 vidual or corporation without, the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at this option, may cancel this lease And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness our hands and seals this 1st day of February 1914.

KALI-INLA COAL COMPANY
By (Signed) C. H Finley, Vice Pres.

PRAIRIE CREEK COAL MINING CO.
By (Signed) F. Bache. Pres.

2719

Exhibit 135.

Contract

Made and entered into this 31st day of August 1911, by and between the Kali-Inla Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:—

That for and in consideration of $5.35 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

#105490—6 H. P. Standard vertical 1 B Type "T" Gasoline engine with friction clutch coupling to connect 3x4 duplex plain fitted power pump outfit #440, $387.00, freight, $39.01.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this gasoline engine shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual
2720 or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness our hands and seals this 31st of August, 1911.

KALI-INLA COAL COMPANY
By (Signed) H. Denman
PRAIRIE CREEK COAL MINING CO.

2721 Exhibit No. 136.

"Contract

Made and entered into this first day of January, 1911, by and between the Kali-Inla Coal Company, party of the first part and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:—

That for and in consideration of $19.85 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One shaker screen bought from the United Iron Works Company for $1500.00, freight $88.80.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of first part for the full value of the machinery.

At the expiration of this lease, this shaker screen shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition when leased, reasonable allowance being made for wear and tear.

2722 This lease shall not be assigned or the property sublet loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease, and on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first pay may, at its option, cancel this lease and the prop-

erty shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part

Witness our hands and seals this 1st day of January, 1911.

KALI-INLA COAL COMPANY,
By (Signed) H. Denman,

PRAIRIE CREEK COAL MINING CO.,
By (Signed) F. Bache.

2723 Exhibit No. 137.

Contract.

Made and entered into this 27th day of March, 1911, by and between the Mammoth Vein Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of $18.00 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery.

One 72″x18′ return tube boiler recently purchased from the Erie Boiler Works and placed at #4 shaft in Sec. 1 T 4 N R 32 West in Sebastian County, Arkansas.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this boiler and fittings shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let or loaned or be made use of to or by any other individual or cor-

poration without the written consent of the party of
2724 the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery tot the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness our hands and seals this 27th day of March, 1911.

MAMMOTH VEIN COAL COMPANY
By (Signed) H. Denman, Treas.

PRAIRIE CREEK COAL MINING COMPANY,
By (Signed) C. H. Finley,
Acting Auditor.

2725 Exhibit No. 138.

Assignment of Contract.

For and in consideration of payment of $1.00, the receipt whereof is hereby acknowledged, and other valuable considerations, the Mammoth Vein Coal Company hereby assigned to the Kali-Inla Coal Company all its interest in the contract between the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company dated March 27th, 1911 covering lease of one 72″ x 18′ return tubular boiler located at #4 shaft in Sec. 1 twp 4, N. Range 32 West, Sebastian County, Arkansas.

MAMMOTH VEIN COAL CO.
By (Signed) H. Denman

KALI-INLA COAL COMPANY
By (Signed) C. H. Finley, Auditor

August 2, 1911.

2726 Exhibit 139

Contract

Made and entered into this 27th day of March, 1911, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of $15.00 per month payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period till March 1, 1921, the following described machinery;

One 18 x 36 double cylinder first motion Crawford and McCrimmon hoisting engine, now placed at the slope of #4 mine.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease the machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part. And it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual, partnership or corporation without the written consent of the party of the first part being first obtained.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive
2727 months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witnes: Our hands and seals this 27th day of March, 1911.

KALI-INLA COAL COMPANY,
By (Signed) H. Denman, Treas.

PRAIRIE CREEK COAL MINING CO.
By (Signed) C. H. Finley,
Acting Auditor.

2728 Exhibit 140

Supplement to Contract made and entered into on the 27th day of March, 1911, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part: Witnesseth:

That for and in consideration of the payment mentioned in the above named contract, the following property is added to and made a part of the property leased in the above named contract: 1 pipe line from boiler house at Mine #4 to slope engine located at Goo Goo Eye.

This property shall be governed by the same terms as the other property covered by the aforesaid contract.

Witness our hands and seals this 15th day of April 1911.

KALI- INLA COAL COMPANY,
(Signed) H. Denman, Treas.

PRAIRIE CREEK COAL MINING COMPANY,
(Signed) C. H. Finley,
Acting Auditor.

2729 Exhibit 141.

"Contract.

Made and entered into this 28th day of February, 1914, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:

That for and in consideration of the sum of 2.65 Dollars per month, payable at the end of each month, the party of the

first part does hereby lease to the party of the second part, for a period of five years from the date of this lease, the following material:

Three and 13/100 tons of steel rails, valued at $128.54

This material while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for full value of the material.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sublet loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being obtained and the title of this property shall
2730 remain with the party of the first part.

In case the party of the second part ceases to use this property or material for a period of four consecutive months the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 28th day of February, 1914.

KALI-INLA COAL COMPANY,
By C. H. Finley, Auditor.

PRAIRIE CREEK COAL MINING CO.
By F. Bache, Pres.

2731

Exhibit No. 142.

Contract

Made and entered into this 30th day of November, 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part,

Witnesseth:

That for and in consideration of the sum of 0.30 Dollars per month payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of Five years from the date of this lease the following described machinery:

One Elevator, bout of L. Freenberg & Company, Ft. Smith, Ark.. valued at $20.00.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of
2732 the part being obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or material for a period of four consecutive months the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 30th day of November 1913.

KALI- INLA COAL COMPANY
By C. H. Finley, Auditor.

PRAIRIE CREEK COAL MINING CO.
By F. Bache, Pres.

2733 Exhibit No. 143

Contract

Made and entered into this 30th day of September, 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part,

Witnesseth:

That for and in consideration of the sum of 24.54 Dollars per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part, for a period of five years from the date of this lease, the following property:

Two electric Pumps, manufactured by the Deane Steam Pump Company, valued at $1066.78; 2525 Lbs. of copper wire valued at $471.48; wire and fuses $32.92; circuit breaker and switches $64.88.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

2734 This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual

or corporation without the written consent of the party of the first part being obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 30th day of September, 1913.

KALI-INLA COAL COMPANY,
By C. H. Finley, Auditor.

PRAIRIE CREEK COAL
MINING CO.,
By F. Bache, Pres.

2735 Exhibit No. 144

Contract.

Made and entered into this 31st day of January, 1914, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of the sum of 3.31 Dollars per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part, for a period of five years from the date of this lease, the following material:

Wire for installing Mining Machine, valued at $220.37.

This material, while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of

the second part shall be liable to the party of the first part for the full value of the material.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine, and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property
2736 shall remain with the party of the first part.

In case the party of the second part ceases to use this property or material for a period of four consecutive months the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 31st day of January, 1914.

KALI-INLA COAL COMPANY,
By C. H. Finley, Auditor.

PRAIRIE CREEK COAL
MINING CO.
By F. Bache, Pres.

2737 Exhibit No. 145.

Contract.

Made and entered into this 31st day of March, 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of the sum of $7.50 per month, payable at the end of each month, the party of the first part, for a period of five years from the date of this lease, does hereby lease to the party of the second part the following described machinery:

One Palmer Forced Draft Slack Burner, outfit including engine, fan, grates and appurtenances, valued at Five Hundred ($500.00) Dollars.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual
2738 or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 31st day of March, 1913.

KALI-INLA COAL COMPANY,
By C. H. Finley, Auditor.

PRAIRIE CREEK COAL
MINING CO.,
By F. Bache, Pres.

2739 Exhibit No. 146.

Contract.

Made and entered into this 30th day of November, 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of the sum of $14.88 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part, for a period of five years from the date of this lease, the following material:

Twenty-four tons of steel rails, valued at $723.26.

This material, while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the material.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

2740 In case the party of the second part ceases to use this property or material for a period of four consecutive months the party of the first part, at its option, may cancel this lease, and on cancellation of this lease, the party of the second part shall at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 30th day of November, 1913.

KALI-INLA COAL COMPANY,
By C. H. Finley, Auditor.

PRAIRIE CREEK COAL
MINING CO.,
By F. Bache, Pres.

2741 Exhibit No. 147.

Contract.

Made and entered into this 31st day of December, 1913, by and between the Kali-Inla Coal Company, party of the first part and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of the sum of 5.85 Dollars per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part, for a period of five years from the date of this lease, the following property:

One twenty-five horse power general electric motor, valued at $390.10.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the

first part being first obtained and the title of this property shall remain with the party of the first part.

2742 This lease shall not be assigned or the property sublet, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 31st day of December, 1913.

KALI-INLA COAL COMPANY,
By C. H. Finley, Auditor.

PRAIRIE CREEK COAL
MINING CO.,
By F. Bache, Pres.

2743 Exhibit No. 148

Contract

Made and entered into this 30th day of September, 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of the sum of $1.18 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part, for a period of five years from the date of this lease, the following material:

One Sheave Wheel.

This material, while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the material.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

2744 In case the party of the second party ceases to use this property or material for a period of four consecutive months the party of the first part, at its option, may cancel this lease. And on cancellation of this lease the party of the second part shall at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease leriod at the option of the party of the first part.

Witness: Our hands and seal this 30th day of September, 1913.

KALI-INLA COAY COMPANY,
By:

PRAIRIE CREEK COAL MINING CO
By

2745 Exhibit 149

Contract.

Made and entered into this 1st day of January 1913, by and between the Hartford Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part. Witnesseth:

That for and in consideration of $43.00 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described property:

43 pit cars.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party or the first part for the full value of the property.

At the expiration of this lease, these pit cars shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part in case such place shall be designated not more than three miles from its present location at #4 mine and they shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first art being first obtained and the title of his property shall remain with the party of the first part.

2746 In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 1st day of January, 1913.

HARTFORD COAL COMPANY
By (Signed) H. Denman, V. P.

PRAIRIE CREEK COAL MINING COMPANY
By (Signed) F. Bache, Pt.

2747

Exhibit 150

Contract

Made and entered into 27th day of March, 1911, by and between the Mammoth Vein Coal Company, party of the first part and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:

That for and in consideration of $18.00 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One 72" x 18' return tube (Erie) boiler recently purchased from the Erie Boiler Works and placed at #4 shaft in Sec. 1 T 4 NR 32 West in Sebastian, Arkansas.

This property while in possession of the party of the second part shall be at all times insured against loss by fire in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the value of the machinery.

At the expiration of this lease, this boiler and fittings shall be returned to the party of the first part for the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

2748 This lease shall not be assigned or the property sublet loaned or be made us of or by any other individual or corporation without the written consent of the party

of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at his option, may cancel this lease. And in cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witnesseth: Our hands and seals this 27th day of March, 1911.

MAMMOTH VEIN COAL COMPANY
By (Signed) H. Denman, Treas.

PRAIRIE CREEK COAL MINING CO.
By (Signed) C. H. Finley,
Acting Auditor.

2749 Exhibit No. 151

"Fort Smith Ark., July 7th, 1914.

It is agreed between the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Mining Company that in view of the fact that the Mammoth Vein Coal Mining Company has been under heavy expense in connection with the strike at the mines that the Prairie Creek Coal Mining Company." and the Mammoth Vein Coal Company, party of the open shop policy hereby agree to be responsible to the Mammoth Vein Mining Company for the amount of money that may be due at any time by it to its employees.

PRAIRIE CREEK COAL MNG CO.
By F. Bache.

MAMMOTH VEIN COAL MNG CO.
By C. H. Finley, Vice Pres.

This Agreement made this twenty third day of March, 1914, by and between the Prairie Creek Coal Mining Company, party of the first part, hereinafter designated "Coal Company," and the Mammoth Vein Coal Company, party of the second part, hereinafter designated "Mining Company."

Witnesseth:

That, Whereas the Coal Company is the lessee from the Cherokee Construction Company of a certain tract of land described as follows:

Lots 1-2-3-4-5-6-7-8-9-10-11-12-13-14 in the N ½ Sec. 1. And Lot 7 and the North East Diagonal halves of lots 8 and 14 in the North half of Sec. 2; all in T. 4 N Range 32 W. located in Sebastian County, Arkansas, on which are located
2750 mines known as Prairie Creek Numbers Three (3) and four (4); and,

Whereas, the Mining Company has this day entered into a contract for the operation of an adjoining mine known as Mammoth Vein Ming No. 1; and,

Whereas, the parties hereto believe it will be mutually advantageous that the Mining Company should also operate the mine of the Coal Company herein.

Therefore, be it agreed between the parties hereto;

1st. That effective the date hereof, the Mining Company agrees to operate the mine on the land owned by the Cherokee Construction Company, lessor of the Prairie Creek Coal Company at its own cost and expense.

And to deliver coal on railroad cars at the mine tipples as the coal Company may direct from time to time and in such sizes as the Coal Company may direct from time to time at the rate of $1.30 per ton mine run coal.

2nd. The Coal Company agrees to pay for coal so delivered by the Mining Company not later than the 25th of the calendar month following that in which it is delivered on said railroad cars.

3rd. The Mining Company agrees to deliver the coal as free from slate and impurities as possible and in case of prepared sizes as free as possible from slack.

4th. The Mining Company agreed to carry on the workings of the mines in a systematic and workmanlike manner with regard to the fullest development of the property.

5th. The Mining Company agrees to carry on its operations in accord with the laws of the State of Arkansas
2751 . and according to the terms of the lease from the Cherokee Construction Company to the Prairie Creek Coal Mining Company.

6th. The mining Company shall operate the mine whenever orders are placed with it by the Coal Company.

7th. The Coal Company agrees to place orders with the Mining Company sufficient to enable to run its mine approximately as many days per month as mines located in the same field and working under like conditions are operated.

The Mining Company in consideration of the above further agrees that it shall be liable for all accidents which may occur to its employees or others and to hold the Coal Company free of all liability on such account.

This contract is entered into for a term of ten (10) years from date hereof but may be terminated by either party on sixty (60) days notice in writing. And may be terminated at any time by the Coal Company without notice to the Mining Company in which event, however, the Coal Company shall be compelled to pay the Mining Company an amount equal to whatever profit the Mining Company might fairly be expected to have made in the ensuing sixty (60) days.

During the term of this lease or until its termination, the Mining Company shall have the use of all the property of the Coal Company located on the leased premises which are known as Prairie Creek Mine No. 4 located on the Midland Valley Railroad near Prairie Creek, Arkansas.

Witness our hands and seals this twenty-third day of March, 1914.

PRAIRIE CREEK COAL MINING CO.
By C. H. Finley, V. P.
Party of the First Part.

MAMMOTH VEIN COAL MINING CO.
By E. P. Joyner, Secy.
Party of the second part .

2752 Exhibit No. 152.

"This agreement made and entered into this .. day of August, 1913, by and between the Sebastian County Coal &

Mining Company, a corporation created under the laws of the State of New Jersey, hereinafter designated Lessor, party of the first part, and the Prairie Creek Coal Mining Company, a corporation created under the laws of the State of Arkansas, hereinafter designated Lessee, party of the second part,

Witnesseth:

That, Whereas, on the 19th day of December, 1906, the Lessee entered into a contract with the Cherokee Construction Company as Lessor, by which the Lessee leased from the said Lessor, the mining property described in said lease of date December 19, 1906; and

Whereas, the said Cherokee Construction Company has sold and transferred all of said property to the Sebastian County Coal & Mining Company and said Sebastian County Coal & Mining Company is now the owner of the said property covered by lease; and

Whereas, it was provided in said lease of December 19, 1906, that the Lessor shall keep all insurable property in connection with the said mines insured, at the cost, however, of the Lessee, and that in case of fire the Lessor agreed to collect the loss from the insurance company or companies and pay the same to the Lessee, all of which sums, however, to be used by the Lessee to restore the property burned or destroyed by such fire; and

2753 Whereas, the following losses by fire have occurred, and the amounts stated below collected by the Lessor from the insurance companies which sums of money are now in the possession of the Lessor, viz:

Loss, by fire on the following described property included in said lease:

Tipple and appurtenances at No. 4 Mine destroyed by fire February 24, 1913,	$4600.00
Store building at Midland destroyed by fire, December 14, 1911,	1500.00
Fan and Fan house at No. 4 mine destroyed by fire, November 28, 1912,	1300.00
Total insurance money received	$7400.00

And Whereas, the Lessee, in lieu of installing a new fan at No. 4 Mine, has installed at No. 4 Mine a fan owned by the Lessor which was formerly installed at Lessor's No. 3 Mine, and has built a new Fan house at No. 4 Mine; and

Whereas, the cost of installing said fan and building said fan house amounted to $500.00; and

Whereas, it is desired by the said Lessee in lieu of said property destroyed at Midland, Arkansas, December 14, 1911, and the Fan and Fan House at No. 4 Mine burned November 28, 1912, excepting as to $500.00 used by the Lessee in rebuilding the Fan and Fan House installed at No. 4 Mine, as hereinbefore mentioned, to apply the balance of said insurance money, viz; $6900.00 to the building of an enlarged tipple at Prairie Creek No. 4, with long shaker screen and designed for our loading tracks, at an established cost of $8,732.00 in accordance with estimate of cost as follows, to-wit:

Concrete Foundations, for Rock Engine, Shaker Engine; and Tipple 58 cu. yds. of Concrete (inc. excavation) at $9.00	$ 522.00
Lumber in tipple, 52 M. ft B. M. at 30.00	1560.00
Labor " " at 16.00	832.00
Screen	1300.00
Sheaves	155.00
Scales	95.00
Weigh Pan	225.00
Rock Car	75.00
Steam Pipes	125.00
Shaker Engine	350.00
Rock Engines	200.00
Setting Machinery	400.00
Grading Rock Dump	200.00
Bolts, rods, washers, flat sheets, galv iron etc	750.00
Belting	30.00
Signal Bells and appurtenances	100.00
Builders Risk	50.00
Engineering	363.00
Two Hoisting Cages	850.00
Timber Curbing at Top Hoisting Shaft,	550.00
	$8732.00

Whereas, the Lessee desires to apply $6900.00 of said insurance money upon the cost of building said tipple and its improvements, and $500.00 to the cost of said Fan House and installing said Fan, the balance of the cost of said tipple at No. 4 Mine estimated at $1832.00, to be paid by the Lessee; and

2755 Whereas, it is desired that as near as practicable, the portion of said improvements to be paid for by the in-

surance company shall belong to the Lessor, and the portion of said improvements to be paid by the Lessee shall belong to the Lessee, and that the Lessor shall have the privilege of purchasing same from the Lessee.

Now, Therefore, the parties hereto enter into the following covenants and agreements, to-wit:

1. That the Lessee shall proceed to construct said improvements at No. 4 tipple above described in accordance with plans attached hereto, and that the Lessor shall apply said insurance money to the amount of $7400.00 to the payment of the same, and to the payment of cost of building Fan House and installing Fan as above described, and that the Lessee shall pay the balance of the cost of said improvements estimated to be $1832.00, and that in consideration thereof, the following portion of said improvements shall belong to and be assets of the Lessee, viz: The screen, shaker engine, builders risk and belting, and that all of the balance of said improvements in accordance with above estimate of cost, together with the Fan and Fan House above described, shall belong to and be assets of the Lessor.

2. That at the expiration of said lease, dated December 19, 1906, the Lessor herein shall have the right to purchase the portion of said improvements belonging to the Lessee at the value of said improvements at that time, to be determined by the parties hereto, and in case they cannot agree as to said value, the same to be determined by three arbitrators, one to be selected by the Lessor and one by the Lessee, and
2756 the two arbitrators thus selected to select the third arbitrator, the decision of any two of which shall be binding upon both of the parties thereto.

3. That the improvements herein provided for belonging to the Lessor shall come under and within the terms of the said lease of date December 19, 1906, and said lease shall be and remain in full force and effect and binding in all respects upon each of the parties hereto.

Witness our hands the day and year first above written.

(Seal) SEBASTIAN COUNTY COAL & MINING COMPANY,
By C. E. Ingersoll, President.

Attest:
H. E. Yarnall,
Secretary.

(Seal) PRAIRIE CREEK COAL MINING COMPANY,
By F. Bache, President.

Attest:
C. H. Finley,
Secretary."

2757 Exhibit 154

Agreement

This Agreement made this 20th day of November, 1913, by and between Franklin Bache, party of the First part and the Hartford Coal Company, Party of the Second Part, Witnesseth:

That Whereas, the Bolen-Darnall Coal Company is the owner of the coal underlying lot No. 22 of Sec. 3, Twp. 4 N. Range 32 West Sebastian County, Arkansas.

And Whereas, Franklin Bache is the owner of the coal underlying the SW¼ of SW¼, S e 3, Twp. 4 North, Range 32 West.

And Whereas, by a certain agreement dated Nov. 19th, 1913, copy of which is attached hereto and made a part thereof, Franklin Bache leased the coal under the tract owned by him to the Bolen-Darnall Coal Company and in the same agreement, the Bolen-Darnall Coal Company leased the coal under the property owned by it to Franklin Bache,

And Whereas, the property leased by the Bolen-Darnall Coal Company to Franklin Bache adjoins the property of the Hartford Coal Company,

And Whereas, the coal under this property can be advantageously removed by the Hartford Coal Company,

Therefore, be it agreed between the said Franklin Bache and the Hartford Coal Company that the said Bache hereby assigns all his rights under said lease to the Hartford Coal Company so far as concerns lot 22 Sec. 3, Twp. 4 N. Range 32 West, and the Hartford Coal Company hereby undertakes to assume the terms of the said lease so far as it affects
2758 the said lot no. 22, and to hold the said Bache clear of any responsibility thereunder.

If at any time the Hartford Coal Company should fail to carry out the terms of this agreement or the terms of the lease between Franklin Bache and the Bolen-Darnall Coal Company which the Hartford Coal Company assumes hereby, then the rights hereby conveyed by Bache to the Hartford Coal Company shall revert to the said Bache.

The Hartford Coal Company agrees to furnish said Bache certified copy yearly or other satisfactory evidence of the payment of advance royalty and monthly of the payment of any royalty on coal actually removed from the property; and failing to do so, shall entitle the said Bache to declare this agreement void and to take possession of said property.

It shall be held in this agreement that any rights and duties of the said Bache or the Hartford Coal Company herein shall also apply to the successors or assigns of either or both said Bache and the said Hartford Coal Company.

FRANKLIN BACHE,
Party of the First Part.

HARTFORD COAL CO.,
By C. H. Finley, Vice Pres.,
Party of the Second Part.

State of Arkansas,
County of Sebastian—ss.

On this 7th day of February 1914, before me, the undersigned, a Notary Public, within and for the County of Sebastian, State of Arkansas, duly commissioned and acting appeared in person Franklin Bache, to me personally well known as the person whose name appears upon the within and foregoing instrument, as one of the parties thereto, and
2759 stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I hereunto set my hand as such Notary Public, in the County of Sebastian, State aforesaid, on this 7th day of February 1914.

(Seal) E. P. JOYNER,
Notary Public.

My Commission expires Dec. 16th, 1915.

State of Arkansas,
County of Sebastian—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County, C. H. Finley to me personally well known to be the Vice President of the Hartford Coal Company, a corporation, and acknowledged that he had executed the foregoing instrument as such Vice President for and on behalf of the said corporation, as its and his free and voluntary act and deed, for the purpose and considerations therein mentioned and set forth, and I do so certify.

Witness my hand and notarial seal this 7th day of February, 1914.

(Seal) E. P. JOYNER,
Notary Public.

My commission expires Dec. 16th, 1915.

Copy.

Agreement.

This Agreement entered into this 19th day of November, 1913, by and between W. E. Beatty, and L. S. Mohr,
2760 Receivers of the Bolen-Darnall Coal Company, parties of the first part, hereinafter referred to as the "Bolen Company", and Franklin Bache, party of the second part, hereinafter referred to as "Bache";

Witnesseth: That Whereas, said Bolen Company is the owner of the coal underlying Lot twenty two (22), Section Three (3), Township Four (4) North Range Thirty Two (32) West, Sebastian County, Arkansas, Containing forty acres more or less, and

Whereas, said Bache is the owner of the coal underlying the Southwest quarter of the Southwest quarter of Section Three (3) Township Four (4) North, Range Thirty two (32) West, Sebastian County. Arkansas, containing forty acres more or less and

Whereas, the Bolen Company is desirous of removing the coal from the tract owned by said Bolen Company;

Now, Therefore, Be it agreed, that the said Bolen Company hereby leases to the said Bache the coal underlying the tract owned by the said Bolen Company, and the said Bache

hereby leases to the said Bolen Company the coal underlying the tract owned by said Bache.

The following conditions of lease shall apply to each tract:

1. The lease shall terminate upon the exhaustion of the coal.

2. The rents shall be $100.00 payable annually in advance, commencing on January 1st, 1914.

3. The royalty shall be at the rate of eight cents per ton of 2,000 pounds on all coal mined and shall be payable on the 25th day of the calendar month next succeeding that in
2761 which the coal is mined.

4. Any rents paid at the above rate of $100.00 per year shall be held as credit on royalties which may become due in the same or succeeding years.

5. The lessee shall make a report in writing not later than the 10th day of each month to the lessor, setting forth the amount of coal removal in the the preceding month.

6. The lessor shall have the right at all reasonable times to enter the property of the lessee for the purpose of examining the property leased.

7. In the event of dispute as to the amount of coal removed, it shall be ascertained by actual measurement of the portion of the property from which the coal has been exhausted.

8. The lessee shall have the right of way through the coal leased for the purpose of conducting mining operations on other lands adjoining the land leased.

9. The lessor hereby warrants good title to the property and quiet possession by the lessee from any one claiming under the lessor.

10. The lessee agrees to carry on mining operations in a workmanlike manner, having in view the greatest recovery of coal from the tract leased as may be consistent in ordinary good mining methods.

11. It is distinctly understood and agreed that the lessor shall not be liable, in damage, for any act of commission or omission of the lessee, or the agents or assigns of said lessee, in the mining of coal in and on said property, or in the operation of coal mines in and on said property.

2762 12. In the event of failure of either party to comply with the terms of this agreement, the lease to such party shall have the right, on sixty days notice in writing, to enter upon the property and take possession of it.

13. In the event of any dispute arising between the parties hereto under this agreement, it shall be determined by arbitration, each party selecting one arbitrator and in the event of their being unable to agree, they to select a third Shall a decision not be reached under this arbitration clause within sixty days of the notice of one party to the other of its desire for arbitration, the matter in dispute shall be no longer subject to arbitration except by mutual consent.

In Witness Whereof we have hereunto signed this agreement this 19th day of November, 1913.

BOLEN-DARNALL COAL COMPANY,
By Signed W. E. Beatty,
L. S. Mohr,
Receivers.

(Signed) FRANKLIN BACHE.

State of Oklahoma,
County of Pittsburg—ss.

On this 4th day of December 1913, before me the undersigned a Notary Public, within and for the County of Pittsburg, State of Oklahoma, duly commissioned and acting, appeared in person, W. E. Beaty, to me personally well known as the person whose name appears upon the within and foregoing instrument, as one of the parties thereto, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so cer-
2763 tify.

In Testimony Whereof, I hereunto set my hand as such Notary Public in the County of Pittsburg, State aforesaid, on the 4th day of Dec. 1913.

(Signed) ALLEN R. CALDWELL,
(Seal) Notary Public.

My commission expires Aug. 16th, 1917.

State of Missouri,
County of Jackson—ss.

On this 22nd day of November, 1913, before me, the undersigned, a Notary Public, within and for the County of Jack-

son, State of Missouri, duly commissioned and acting, appeared in person, L. S. Mohr, to me personally well known as the person whose name appears upon the within and foregoing instrument, as one of the parties thereto, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I hereunto set my hand as such Notary Public, in the County of Jackson State of Missouri, on the 22nd day of November, 1913.

(Signed) BERTHA L. JOHNSON,
Notary Public.

My commission expires September 13th, 1917.

State of Arkansas,
County of Sebastian—ss.

On this 19th day of November, 1913, before me the undersigned, a Notary Public, within and for the County of Sebastian, State of Arkansas, duly commissioned and acting, appeared in person Franklin Bache, to me personally well
2764 known as the person whose name appears upon the within and foregoing instrument, as one of the parties thereto, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I hereunto set my hand as such Notary Public, in the County of Sebastian, State Aforesaid, on the 19th day of November 1913.

(Signed) E. P. JOYNER,
Notary Public.

My commission expires Dec. 16th, 1915.

Certificate of Record.

State of Arkansas,
County of Sebastian,
Greenwood District—ss.

I, Claude Hoffman, Clerk of the Circuit Court and Ex Officer Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 23rd day of June, A. D. 1914,

at 9:40 o'clock a. m., and the same is now duly recorded with the acknowledgment and certificate thereon, in Record Book 50, page 376.

In Witness Whereof I have hereunto set my hand and affixed the seal of said court this 23rd day of June, A. D. 1914.

CLAUDE HOFFMAN,
Circuit Clerk and Ex-Officio Recorder.
(Seal) By Pat. L. Smith, D. C.

2765 Exhibit 153.

Lease.

This Agreement, made this 22 day of June, 1914, by and between the Mammoth Vein Coal Mining Company, a corporation created under the laws of the State of West Virginia, hereinafter designated lessor and the Hartford Coal Company. a corporation created under the laws of the state of Oklahoma, hereinafter designated lessee, Witnesseth:

That Whereas, the American Smokeless Coal Company and the Midland Valley Railroad Company by lease dated July 10th, 1905, have leased to the said lessor herein, certain coal lands for mining purposes, and whereas, the said lessor is desirous of leasing a part of said lands to the said lessee, and whereas, the said lessee is desirous of entering into said lease,

Now, Therefore, the parties hereto enter into the following covenants and agreements, to-wit:

1. The said lessor for and in consideration of the rents and royalties, covenants and agreements hereinafter mentioned and specified on the part of the lessee to be paid and performed, have leased, demised and let and do hereby lease, demise and let unto the said lessee from date November 1, 1914, until all the workable coal has been exhausted, provided, if said coal is exhausted within the term of the lease from the American Smokeless Coal Company to the Mammoth Vein Coal Mining Company, dated July 10, 1905, and if said coal is exhausted before the expiration of said lease dated July 10, 1905, that this lease shall terminate at the time of the exhaustion of said coal.

2766 2. The exclusive right to dig for, mine and remove, and dispose of the coal in, under and upon a certain tract of land situated in Sebastian County in the State of Arkansas, and more particularly described as follows:

The Southwest diagonal half of Lot Seventeen of the North half of Section Two, Township four North, Range Thirty-two West, consisting of Twenty Acres, more or less.

3. The right to cut and use from time to time, for the purpose of the said mining operations, including the construction of said buildings, roads and structures as may be necessary in the conduct of the same, timber less than twelve inches in diameter, measured four feet from the ground growing upon that portion of the above described tract of land.

4. The right to use such running water as may be found upon any of the tracts hereby leased or found upon the surface which covers any of the coal hereby leased, to the extent that the lessors have the right to use the same; provided, such use of the said water shall in no way interfere with its use on other land now owned or which may hereafter be acquired by the said lessors.

5. The said lessor hereby covenants and agrees to and with the said lessee that it shall and may, at all times hereafter during the continuance of the term hereby granted, peacefully and quietly hold, possess and enjoy the premises and exercise the rights hereby demised without let or hinderance by or from the said lessor or by or from any person or persons lawfully claiming the same or any part thereof,
2767 by, from or under them.

6. The said lessor hereby retains and reserves the right and the lessee hereby covenants that the said lessor shall have the right, by their officers, servants, agents, and engineers at all times to enter into and upon the said premises, both on and below the surface, and to inspect examine and make surveys thereof; and the said lessee doth covenant and agree to accurately survey, not less frequently than once in every six months, all new mine workings, entries, air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than one hundred feet to one inch, and to furnish the lessor not less frequently than once in six months, with an accurate copy of said map.

7. The said lessor further reserves during the continuance of this lease for itself and its assigns and lessees, and any and all of them the right of way over any and every part and portion of the herein demised premises for road, railways, waterways and side tracks, and also such use as they and any and all of them may desire of all tracks, roads, railways, waterways and side tracks constructed by the said lessee or said lessor or its assigns, upon the herein demised premises.

8. It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all coal contained therein; and to accomplish this end, among others, the lessee expressly agrees to conduct the operations of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual
2768 mining of the largest amount of coal from the premises hereby demised; and for the purpose of assuring this and to the lessor with greater certainty, the lessee agrees to maintain in good working order all entries and gang ways, air courses, slopes, shafts and planes until the coal between the faces of any of the said entries, gang ways, air courses, slopes, shafts or planes and that portion of the boundary of the said premises towards which any of said entries, gang ways, air courses, slopes, shafts or planes may be directed is mined out as fully as it can be mined out by first class mining methods, or until the lessor gives its consent in writing to the abandonment of the same. The lessee agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings underground shall be laid out and conducted in a thorough and substantial manner and in accordance with first class mining methods, and expressly with a view to the fullest possible development of the demised premises; and that the lessee shall maintain pillars in the mine or mines of dimensions fully sufficient to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out.

And it is further expressly agreed that the lessee shall conduct no stripping operations on the coal beds hereby demised without the written consent of the lessor being first had, and that the lessee shall leave intact at all times a strip of coal fifty yards in breadth next adjoining the boundaries of
2769 the demised premises, except where the said strip is penetrated by the entries and air courses turned off of the slope, excepting the diagonal boundary line across the forty, at which point the lessee may work within thirty feet of said boundary.

That the lessee shall maintain all buildings and machinery and other appurtenances to the mine in good condition and working order; that it will not do, or permit, or suffer to be done any damage or injury to the said premises, property or appurtenances; that it will so arrange and conduct the said mining operations as to cause no interference with the use by

the said lessor of the surface covering the coal hereby leased, or with land of the said lessor, bounding on the tracts of land hereby leased; and that the said mining operations shall not injure or endanger any buildings or structures which the said lessor now has standing or may hereafter cause to be constructed on the surface of bounding lands.

The lessee hereby expressly agrees that it will at all times keep the workings of the mines operated by it on the said demised premises free from water and dangerous gasses.

9. The lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the State of Arkansas regulating the mining of coal, and agrees to protect the lessor against the violation of said laws by said lessee.

10. As a part of the consideration of this lease, the said lessee hereby covenants and agrees to assume all liability in the operation of said mine and hereby agrees to protect and save harmless the said lessor from any claim, damage,
2770 personal injury, or death which may occur to any person or persons by reason of the negligence of the said lessee or its servants and employees in the operation of said mine.

In consideration of the premises and as an inducement to the said lessor to make this agreement, said lessee hereby agrees that neither said lessor, their successors and assigns or said Midland Valley Railroad Company shall be liable for or on account of any loss or damage which may at any time in any manner arise to the said lessee or its successors or assigns, by reason of fire communicated to the buildings of said lessee or its assigns, now erected or hereafter to be erected, or the contents thereof, or to the property of any kind owned or stored by said lessee along such side tracks, spurs or switches, by the locomotives, trains or cars of the Midland Valley Railroad, their successors or assigns, or arising in any manner from the operation of such side tracks or switches, and to that end the said lessee and its assigns will not make any claim against the lessor, their successors or assigns or against said Railroad, for any loss, damage, charge or expense of any kind that may grow out of any fire set or communicated by the locomotives, trains or cars of the Midland Valley Railroad, upon or along said railroad, spurs, side tracks or switches.

11. The said lessee covenants that it will at the termination of this lease, deliver up and surrender to the said lessor,

to be and remain the property of the same, all and singular the premises, rights and privileges herein demised and leased, together with all the mines, entries, openings, tram-
2771 ways, inclines, chutes, tipples, tipple houses, cross ties, sleepers, sills and appurtenances whatsoever, in good working order and repair; but on such termination of this lease the working tools and implements used in mining together with all machinery, miners houses, engines, fans, boilers, pumps, ropes, weighing scales, rails and pit cars placed upon said premises by the said lessee shall be and remain the property of the said lessee.

But it is hereby expressly agreed that upon such termination of this lease, provided all royalties then due are paid and all other covenants and agreements of this lease are performed, the lessee shall have ninety days after the termination of said lease to remove the above described machinery and implements.

12. The said lessee further covenants and agrees that it will not at any time during the term of this lease either voluntarily or involuntarily sublet or transfer same, or any part thereof, or sublet or demise the said premises thereof to any person or persons or corporation whatsoever.

13. The said lessee agrees to commence driving at once the entries turned on the east side of the slope toward part of the above described premises and continue their operation at all times when the mine is in operation during the term of this lease or until such time as said entries reach the boundary line and the coal is mined out.

14. The said lessee hereby covenants and agrees to pay to the said lessor a rent or royalty equal to nine cents per ton on each and every ton of 2000 pounds of coal mined or dug from the demised premises.

2772 15. The minimum royalty during the year commencing November 1st, 1914, shall be One Hundred Twenty (120.00) Dollars to be paid each month at the rate of Ten ($10.00) Dollars per month. And in addition thereto the lessee shall pay nine (9c) per ton of 2000# on all coal mined or dug from the demised premises in excess of One Thousand Three Hundred thirty-three tons (1333) during the said year and each succeeding year thereafter, until the coal shall be exhausted when this lease is terminated.

16. The said lessor, if it so elects, shall have the right to weigh all coal and coke loaded on cars, before the same are

shipped, and the said lessee covenants that the said lessor may so weigh said coal and coke before shipment without let or hindrance from all the operations of the said lessee; and shall any dispute arise as to the accuracy of the scales on which the coal and coke are weighed either by the said lessor or the said lessee, then such dispute shall be settled by testing the scales by government weights. The said lessee further covenants and agrees to furnish within five days from the last of every calendar month at the office of the lessor in Fort Smith, Arkansas, a report properly authenticated showing the coal mined or dug and used or removed from the said mine during the preceding calendar month, and to pay to such person or corporation as said lessor shall direct, the amount of the rent or royalty due for the preceding month on or before the 25th of each month; and if any coal shall have been taken from the said premises and wasted or left as slack coal
2773 in the mines, and not weighed and not accounted for, the quantity of same shall be ascertained and account rendered for the same and payment made at the rate above named. And the lessee covenants that it will keep a book or books of account of the mining and shipping of coal or coke and that said book or books shall be open to the inspection of said lessor and its agents and attorneys for the purpose of comparing and verifying the accounts rendered.

17. The said lessee hereby covenants and agrees to ship all coal or coke mined from or made from the demised premises to or towards its market or destination by the Midland Valley Railroad, and such connecting line or lines as the Midland Valley Railroad shall prefer or select for this purpose, and to more fully effectuate this the said lessee does hereby grant to the said lessor and to its successors and assigns, the right to consign all coal or coke so mined and made and delivered to the said Midland Valley Railroad for shipment by said lessee by whatever line or lines of railroad the said Midland Valley Railroad or its successors or assigns, may prefer or select; Provided always that the said lessee shall not by such routing be subjected to a higher freight rate on such coal or coke than prevails at the time on any other equally available route; Provided further, that the initial carrier for all such coal and coke shall be the said Midland Valley Railroad Company, or its successors or assigns, and the said lessee covenants and agrees that for every ton of coal or coke shipped otherwise than as herein provided it will pay to said

lessor as liquidated damages, for a breach of contract,
2774 the sum of twenty-fice (25) cents in the case of coal and forty (40) cents in the case of coke.

18. The lessee shall have the right to take out the coal mined through the entries, slopes and over the roads of the Hartford Coal Company, its successors or assigns, and for that purpose shall have the right to ingress, egress and regress at all times during the term of this lease.

19. It is further covenanted and agreed by and between the parties hereto in the event the said Lessee shall delay or refuse to comply with the terms of this lease and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessor shall, at their option after sixty days' notice to the lessee, have the right to re-enter upon the demised premises in as full and complete possession as if the terms of this lease were fully performed and ended by limitation.

20. In the event of such termination of this lease for a breach of contract by the Lessee, the said Lessee shall not have the right to remove from the premises any of the coal which may have been mined previous to such termination of this lease, or working tools, machinery or other property, until the said lessee has made full satisfaction to the lessor for any and all damage which they may sustain by reason of such delay or refusal to comply with the terms of this lease; and in that event none of the said properties aforesaid shall be removed from said premises until all royalties and other payments due the Lessor hereunder shall have been pair to the said
2775 Lessor; otherwise such coal, tools, machinery and property shall become the property of the said Lessor.

21. It is hereby expressly agreed that nothing herein contained shall interfere with the right on the part of the said lessor to distrain for rent due and in arrears under the terms of this lease.

22. It is hereby agreed that all rights vested in the said lessor by this lease shall pass to and vest in their successors or assigns and that all covenant and agreements shall be kept and performed by the said lessee, its successor or assigns for the benefit and advantage of the lessor, their successors or assigns.

12. This agreement shall become effective November 1st, 1914.

Witness the hands and corporate seals of the parties hereto, the day and date last above written.

(Seal) MAMMOTH VEIN COAL MINING COMPANY,
By F. Bache, President.

Attest:
By E. P. Joyner,
Secretary.

(Seal) HARTFORD COAL COMPANY,
By F. Bache, President

Attest:
By E. P. Joyner,
Secretary.

2776 Certificate of Acknowledgment.

State of Arkansas,
County of Sebastian—ss.

On this day personally appeared before me the undersigned, a Notary Public, within and for the County and State aforesaid, F. Bache, to me well known as the President of the Mammoth Vein Coal Mining Company, and E. P. Joyner, to me well known as the Secretary of said Mammoth Vein Coal Mining Company, and acknowledged that they had, in their official capacity, executed the foregoing instrument and affixed thereto its corporate seal, as the act and deed of said Mammoth Vein Coal Company for the consideration and purposes herein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal at the County and State aforesaid on this 20th day of June, 1914.

JAS. K. PERKINS,
Notary Public.

My Com. expires April 11, 1918.

Certificate of Acknowledgment.

State of Arkansas,
County of Sebastian—ss.

On this day personally appeared before me the undersigned, a Notary Public, within and for the County and State aforesaid, F. Bache, to me well known as the President of the Hartford Coal Company, and E. P. Joyner, to me well known as the Secretary of said Hartford Coal Company, and ac-
2777 knowledged that they had, in their official capacity, executed the foregoing instrument and affixed thereto its

corporate seal, as the act and deed of said Hartford Coal Company for the consideration and purposes therein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal at the County and State aforesaid on this 20th day of June, 1914.

My Comm. expires April 11, 1918.

(Seal) JAS. K. PERKINS,
Notary Public.

Certificate of Record.

State of Arkansas,
County of Sebastian,
Greenwood District—ss.

I, Claude Hoffman, Clerk of the Circuit Court and Ex-Officio Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 24th day of June A. D. 1914, at 11 o'clock A. M., and the same is now duly recorded with the acknowledgment and certificate thereon, in Record Book 50, page 380.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 24th day of June, A. D. 1914.

(Seal) CLAUDE HOFFMAN,
Circuit Clerk and Ex-Officio Recorder,
By Pat. L. Smith, D. C."

2778 Exhibit 155.

Contract.

Made and entered into this 1st day of December 1910, by and between the Denman Coal Co., party of the first part, and the Hartford Coal Company, party of the second part.

Witnesseth: That for and in consideration of a payment of $25.00 per month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease the following described property:

One 12 x 18, Second motion Litchfield engine with cast iron drum, moved from Burma, Ark., about Dec., 1st, 1910, from near old Burma shaft, and taken to Mine No. 1 of the Cherokee Construction Co., and placed on the NW/4 of the SW/4,

Section 2, T. 4 N. R. 32 W. Sebastian County Arkansas. This property being subject to mortgage of Denman Coal Company property at Midland, Ark.

This property while in the possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease this machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was orig-
2779 inally taken without any cost to the party of the first part, and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property be sublet, loaned, or be made use of to or by any other individual, partnership or corporation without the written consent of the party of the first part first being obtained, neither shall the property be removed from the land where first placed without the written consent of the party of the first part first being obtained.

In case the party of the second part ceases to use this machinery for a period of three consecutive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease the party of the second part shall, at its own cost, return the machinery to the party of the first part to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

2780 Witness: Our hands and seals this 1st day of December, 1910.

DENMAN COAL COMPANY,
By H. Denman President,

HARTFORD COAL COMPANY.
By Ransom Gully Jr Auditor.

2781 Exhibit 115.

Fort Smith, Ark., July 7th, 1914.

It is agreed between the Mammoth Vein Coal Company and the Mammoth Vein Coal Mining Company that in view of the fact that the Mammoth Vein Coal Mining Company has been under heavy expenses in connection with the strike at the mines that the Mammoth Vein Coal Company being greatly interest in the successful outcome of the open shop policy hereby agrees to be responsible to the Mammoth Vein Coal Mining Company for the amount of money that may be due at any time by it to its employees.

MAMMOTH VEIN COAL COMPANY,
By F. Bache, Pr.

MAMMOTH VEIN COAL MINING COMPANY,
By C. H. Finley, Vice Pres.

This agreement made this twenty-third day of March, 1914, at Forth Smith, Arkansas, by and between the Mammoth Vein Coal Company party of the first part, and the Mammoth Vein Coal Mining Company, party of the second part.

Witnesseth: That, Whereas, the Mammoth Vein Coal Company operates under lease from the Mammoth Vein Royalty Company a certain tract of land described as follows:

Lots 15, 16 and 21 and two (2) acres in the NW corner of lot 22. All in the North half of Sec. 2, T. 4N. Range 32 West, Sebastian County, Arkansas, containing about thirty acres of unmined coal;

And, Whereas, the Mammoth Vein Coal Mining Company is the lessee of over three hundred and forty (340)
2782 acres of coal land described as follows adjoining the land leased by the Mammoth Vein Coal Company, to-wit:

The SW diagonal halves of lots 8 and 14 and lots 3, 10, 11, 12, 13 and the North East diagonal half of lot 17 in the north half of Sec. 2. And lots 7 and 14 in the north half of Sec. 3 All in T. 4 north, range 32 west Sebastian County, Arkansas; and,

Whereas, it is probable that the coal will be exhausted from the lands leased by the Mammoth Vein Coal Company much sooner than from the lands leased by the Mammoth Vein Coal Mining Company; and,

Whereas, all the coal from both leases is taken out thru one mine; and,

Whereas, it is considered desirable that the operations of the mine should be carried on by the Company having the larger acreage of coal unmined.

Therefore, be it agreed by and between the Mammoth Vein Coal Company, party of the first part, hereinafter designated "Coal Company" and the Mammoth Vein Coal Mining Company, party of the second part, hereinafter designated "Mining Company:"

That effective the date hereof, the Mining Company agrees to operate the mine on the said land owned by the Mammoth Vein Royalty Company, lessor of the Mammoth Vein Coal Company, and the land of the Mammoth Vein Coal Mining Company, lessee of the Cherokee Construction Company, at its own costs and expense.

And to deliver all coal mined by it to the coal Company on railroad cars at the mine tipples as the Coal Com-
2783 pany may Direct from time to time and in such sizes as the Coal Company and direct from time to time at the rate of $1.30 per ton mine run coal.

2nd. The Coal Company agrees to pay for coal so delivered by the Mining Company not later than the 25th of the calendar month following that in which it delivered on said railroad cars.

3rd. The Mining Company agrees to deliver the coal as free from slate and impurities as possible and in case of prepared sizes as free as possible from slack.

4th. The Mining Company agrees to carry on the workings of the mine in a systematic and workmanlike manner with regard to the fullest development of the property.

5th. The Mining Company agrees to carry on its operations in accord with the laws of the State of Arkansas and according to the terms of the leases from the Mammoth Vein Royalty Company to the Coal Company and from the Cherokee Construction Company to the Mining Company.

6th. The Mining Company shall operate the mine whenever orders are placed with it by the Coal Company.

7th. The Coal Company agrees to place orders with the Mining Company sufficient to enable it to run its mine approximately as many days per month as mines located in the same field and working under like conditions are operated.

2784 The Mining Company in consideration of the above further agrees that it shall be liable for all accidents which may occur to its employees or others and to hold the Coal Company free of all liability on such account.

This contract is entered into for a term of ten (10) years from date hereof but may be terminated by either party on sixty (60) days notice in writing. And may be terminated at any time by the Coal Company without notice to the Mining Company, in which event, however, the Coal Company shall be compelled to pay the Mining Company an amount equal to whatever profit the Mining Company might fairly be expected to have made in the ensuing (6) days.

During the term of this lease or until its termination, the Mining Company shall have the use of all the property of the Coal Company located on the leased premises which are known at Mammoth Vein Mine No. 1 located on the Midland Valley Railroad and on the Rock Island Railroad near Hartford, Arkansas.

Witness our hands and seals this twenty-third day of March, 1914.

MAMMOTH VEIN COAL COMPANY,
By C. H. Finley, V. P.
Party of the Second Part.

MAMMOTH VEIN CIOAL MINING COMPANY,
By E. P. Joyner, Secy.
Party of the First Part.

2785 Exhibit 116.

Plaintiff's Exhibit 116.

3 boilers at $600.00	$1800.00
1 hoist,	1200.00
1 Compressor,	2000.00
1 Heater,	300.00

Outside piping,	300.00
Shaker,	500.00
Shaker Engine,	200.00
120 pit cars @ $30.00,	3600.00
12 mules @ $193.00,	3092.00
300 tons rails @ $20.00,	6000.00
L Boiler RI tipple,	588.00
	$19580.00

Agreement.

Fort Smith, Arkansas, Feb. 14, 1914.

The Kali Inla Coal Company hereby rents to the Mammoth Vein Coal Company all the machinery, etc., set forth in the attached list at $3132.80 per annum.

This agreement to continue in effect for Twenty (20) years.

Upon the failure of the Mammoth Vein Coal Company to carry out the terms of this agreement and pay rental annually to the Kali Inla Coal Company, the Kali Inla Coal Company may, at its option, take possession of certain machinery upon thirty (30) days notice in writing to the said Mammoth
2786 Vein Coal Company.

At the expiration of the said twenty (20) years the Mammoth Vein Coal Company to have the option of extending this agreement for an additional term of ten (10) years.

The Mammoth Vein Coal Company shall at all times keep said machinery in good repair, reasonable wear and tear excepted, and replace the same from time to time if any becomes worn out or destroyed.

The Mammoth Vein Coal Company shall at all times keep same machinery insured from loss by fire and their policies to show that the loss if any shall be payable to the Mammoth Vein Coal Company or the Kali Inla Coal Company as their interests may appear.

KALI INLA COAL CO.,
By F. Bache, Pres.

MAMMOTH VEIN COAL CO.
By C. H. Finley, Vice Pres.

2787 Exhibit 117.

Contract.

Made and entered into this 5th day of December, 1911, by and between the Denman Coal Company, party of the first part, and the Mammoth Vein Coal Company, party of the second part, Witnesseth:

That for and in consideration of a payment of $9.00 per month, payable at the end of each month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease, the following described machinery:

One set 80 ton 64 foot "Monarch" railway tracks scales now set on C. R. I. & P. tracks at new C. R. I. & P. tipple of Mammoth Vein Coal Company. These scales being taken from property of Denman Coal Company at Burma, Arkansas.

This property while in the possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease this machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part.

2788 And it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property be sublet, loaned or be made use of to or by any other individual, partnership or corporation without the written consent of the party of the first part being first obtained. Neither shall the property be removed from the land where first placed without the written consent of the party of the first part being obtained.

In case the party of the second part ceases to use this machinery or property for a period of thre consecutive months, the party of the first part at his option may cancel this lease. And on cancellation of this lease the party of the second part shall, at its own cost, return the machinery to the party of the first part to the place from which it was originally taken, or in case the party of the second part fails for three consecu-

tive months to pay the above mentioned rental, the party of the first part, may at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

Witness: Our hands and seals this 1st day of December, 1911.

DENMAN COAL COMPANY,
By (Signed) H. Denman, President.

2789 MAMMOTH VEIN COAL COMPANY,
By (Signed) F. Bache, Pt.

Exhibit 118

Contract.

Made and entered into this 5th day of October, 1910, by and between the Denman Coal Co., party of the first part, and Mammoth Vein Coal Co. party of the second part, Witnesseth:

That for and in consideration of a payment of $32.00, thirty-two dollars per month, payable at the end of each month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease, the following described machinery:

One 10″ x 12″ double cylinder, Crawford & McCrunmon hoisting engine, former at Bumia shaft to be used as endless rope engine, at Rock Island, connection at Mammoth Vein mine #1, and one 48″ x 16″-0 Obrien retuen tubular boiler to be used at New Rock Island tipple at M. V. #1 mine, at Priarie Creek, Arkansas, on the Midland Valley R. R. in lot 21 Section 214 N. R. 32 west. Which Was Removed From The Property Of The Denman Coal Co. at its mine number 1, located at Burma, Arl on or about October 1st, 1910.

2790 This property while in the possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease this machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part. And it shall be returned in as good condition as when leased. reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property be sublet, loaned or be made use of to or by any other individual, partnership or corporation without the written consent of the party of the first part being first obtained. Neither shall the property be removed from the land where first placed without the written consent of the party of the first part being obtained.

In case the party of the second part ceases to use this machinery or property for a period of three consecutive months, the party of the first part at his option may cancel this lease, And on cancellation of this lease the party of the second part shall, at its own cost, return the machinery to the party of the first part to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the par-
2791 ty of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

Witness: Our hands and seals this 5th day of October, 1916.

DENMAN COAL COMPANY,
By (Signed) H. Denman, Pres.

MAMMOTH VEIN COAL COMPANY,
By (Signed) Ramon Gulley.

2792 Exhibit 119.

Contract.

Made and entered into this 15th day of January 1914, by and between the Denman Coal Company, party of the first part, and the Mammoth Vein Coal Company, party of the second part, Witnesseth:—

That for and in consideration of $1.75 per month, payable at the end of each month, the party of the first part does here-

by lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One 50 H. P. boiler—size 36" x 18' located at Mine No. 1.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this boiler shall be returned to the party of the first part by the party of the second part in such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at No. 1 mine and it shall be returned in as good condition as when leased, rea-

2793 sonable allowance being made for wear and tear.

This lease shall not be assigned or the property sublet, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use the boiler for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part, shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease, and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witnesseth: Our hands and seals this 15th day of January, 1914.

DENMAN COAL COMPANY,
By (Signed) C. H. Finley,
Secy. & Treas.

MAMMOTH VEIN COAL COMPANY,
By . . . . . .

2794 Plaintiffs' Exhibit 157.

October 19th, 1917.

Mr. W. H. Miellmier,
Hartford, Ark.

Dear Sir:—

The Receivers hereby agree that beginning with October 1st, and until further notice, the rate of royalty under lease dated June 28th, 1917, between the Receivers for the Mammoth Vein Coal Company and the Mammoth Vein Royalty Company, party of the first part, and W. H. Miellmier, party of the second part, shall be sixty-five ($.65) Cents per ton.

CLYDE H. FINLEY,
(Signed
A. P. HILLIARD, Receivers.

Lease Contract.

This agreement made and entered into this 28th day of June 1917, by and between Clyde H. Finley and H. P. Hilliard, Receivers, for the Mammoth Vein Coal Company and the Mammoth Vein Royalty Company, party of the first part and W. H. Miellmier, party of the second part.

Witnesseth: That for and in consideration of the cov-
2795 enants hereinafter mentioned to be performed by the party of the second part, the party of the first part hereby grants and lets to the party of the second part the right and privilege to dig, mine, remove and sell the coal on the following described tract of land, to-wit:

All that coal on the west side of lot No. 21 and lot No. 16; the north half (N/2) of section 2; Township 4 North; Range 32 West; which coal lies to the north and northeast of the drift now opened and operated by the said W. H. Miellmier. The said coal being only the coal lying on the west side of the slope known as Mammoth Vein No. 1 slope.

The following conditions are hereby agreed to by the parties hereto.

First: The contract shall continue in effect until January 1st, 1919, unless terminated in the manner provided for in this contract, or in the event the Receivership of the Mammoth Vein Coal Company and the Mammoth Vein Royalty Com-

pany is sooner terminated, this lease shall terminate at the same time.

Second: The minimum royalty per ton on this coal shall be Fifty cents ($0.50) per ton. This shall apply on all coal dug, mined or removed from said premises. This includes, all grades of coal. It also includes coal used for boiler purposes or any other purposes on this premises in connec-
2796 tion with the operation of said mine.

The royalty on coal mined from the demised premises shall be paid on a sliding scale depending on the price received by the Lessee for coal mined and sold from the demised premises. On every ton of coal from the demised premises that the Lessee sells at the rate of Two Dollars and Twenty-five cents ($2.25) or less per ton, he shall pay the Lessor a royalty of one quarter (¼) or twenty-five per cent (25%) on selling price but said royalty per ton shall not be less than Fifty cents (%0.50). On all coal sold from the demised premises by the Lessee at a price in excess of Two Dollars and Twenty-five cents ($2.25) per ton, the Lessee shall pay the Lessor 56¼¢ per ton plus 50% or one-half of the amount that the selling price exceeds $2.25 per ton. For example,—in case the Lessee sells coal at $3.00 per ton, the royalty on every ton of coal sold at $3.00 per ton will be 56¼¢ plus one-half of 75¢, equals 37½¢ making a total of 93-3/4¢ per ton royalty. Two thousand (200) pounds shall constitute a ton.

Third: The party of the second part shall not open a mine or conduct his operations in such a manner as to interfere in anyway with the operations of Mammoth Vein Mine No. 1 or the mine known as "Hoffman" or any other mine or strip pit operation now being conducted in this vicinity. The party of the first part shall be the sole judge and its decision
2797 shall be final on this question.

Fourth: The party of the second part, through its agents, shall have access to the workings of the mine at all reasonable times.

Fifth: All the work on this mine shall be conducted according to the laws of the State of Arkansas, and the party of the first part shall not be held liable, in any manner, either directly or indirectly, for accidents, injuries, debts or obligations to any employees of the party of the second part. And the party of the second part agrees to deliver the demised premises to the party of the first part, at the expiration of this lease contract, or at the termination thereof as herein provided for, free from all claims for labor.

Sixth: The party of the second part shall turn in to the party of the first part at its office in Fort Smith not later than the 5th of the month, a true record of all coal mined and removed or used on the premises during the next preceding month and shall pay royalty on said coal not later than the 15th of the month following that in which the coal was mined. Failure to make payment of said royalty shall at the option of the party of the first part cancel this lease and the party of the first part, without liablity for damages, shall have the right of taking immediate possession of all workings, improvements, tools, machinery and supplies on the demised premises, and hold same until the amount of royalty is paid in
2798 full to the party of the first part.

Seventh: As a minimum royalty on said lease, the party of the second part agrees to pay to the party of the first part, on the first day of each month, a minimum advance royalty of Thirty Dollars (30.00) per month, which minimum advance royalty shall apply as a credit on the coal mined during the month for which the royalty was paid. Failure to pay the minimum royalty of Thirty Dollars ($30.00) per month, shall at the option of the party of the first part cancel this lease and give the party of the first part the privilege of taking immediate possession of the property without legal proceedings and without liability for damages for so doing.

Eighth: In case the party of the second part fails, for three consecutive months, to operate said mine, unless prevented by a general strike, it shall work a forfeiture of said lease and the party of the first part shall have the right to take possession of said property without legal proceedings or liability for so doing.

Ninth: This lease contract cannot be assigned or transferred, either voluntarily or involuntarily or by any process of law, without the written consent of the party of the first part to such a transfer or assignment first being obtained before such a transfer or assignment is made.

Tenth: The party of the second part hereby agrees to make a good and sufficient bond in the sum of Five hun-
2799 dred dollars ($500.00) to be approved by the Receivers, guaranteeing the payment of royalties and the fulfillment of the terms of this lease contract.

Eleventh: A joint inventory shall be taken of the pit cars, rails and other personal property turned over to the party of the second part by the party of the first part. Said inventory

to be made a part of this contract. It is understood that the party of the first part has the right to take these pit cars, rails and other personal property, at any time it has other use for said pit cars, rails and other personal property, without liability for damages for so doing.

Twelfth: The Lessee shall keep a correct set of books showing coal mined, loaded, shipped and sold, which books shall be open to the inspection of the Lessor or its duly authorized agent at all reasonable times.

Thirteenth: It is further understood that this contract shall be valid and binding only when approved by the United States Court having jurisdiction of the Receivership of the Mammoth Vein Coal Company and the Mammoth Vein Royalty Company.

Witness our hands and seals this 10th day of Aug. 1917.

CLYDE H. FINLEY,
H. P. HILLIARD,
Receivers for Mammoth Vein Coal Co.

and

W. H. MIELLMIER,
Party of the second part.

2800 Bond.

Whereas, the Receivers of the Mammoth Vein Coal Company and the Mammoth Vein Royalty Company, have entered into a contract with W. H. Miellmier, said contract being dated the 28th day of June, 1917, and

Whereas, Section 10 of that contract requires a bond to be made by the said W. H. Miellmier,

Now, Whereas, we, the undersigned, obligate and bind ourselves to Clyde H. Finley and H. P. Hilliard, Receivers, in the sum of Five Hundred Dollars ($500.00) to be void upon condition that the said W. H. Miellmier shall duly perform all of the provisions of said contract; otherwise to remain in full force and effect.

W. H. MIELLMIER,
O. A. BROOK,
W. E. WEST.

2801 Plaintiff's Exhibit 110.

Assignment of Boone Lease to Jos. M. Spradling.

Whereas, on the 13th day of January, 1903, T. W. M. Boone and Ella Bone, his wife, leased to the Prairie Creek Coal Company, its successors and assigns, the following described real estate located in the Greenwood District Sebastian County, Arkansas, to-wit:

West half of the Southeast quarter of the Northwest quarter and the Southwest quarter of the Northwest quarter which lines north of Cherokee Creek, and the South twenty-three (23) acres of the Northwest quarter of the Northwest quarter, all in Section twenty-seven (27); and the East half of the Northeast quarter, the East half of the Northwest quarter of the Northwest quarter, the Southwest quarter of the Northeast quarter north of Cherokee Creek, and the East half of the Northeast quarter of the Southeast quarter, all in Section twenty-eight (28), Township Five (5) North Range Thirty-One (31) West; fgor a period of twenty-five years from the date of said lease with the privilege to the Prairie Creek Coal Company among other things, of removing the coal under the premises so leased; and

Whereas, the Prairie Creek Coal Company has heretofore conveyed its rights under this lease to the American Smokeless Coal Company; and

Whereas, the American Smokeless Coal Company has made a certain Deed of Trust, dated January 28, 1903, to the
2802 North American Trust Company, Trustee, to secure a certain mortgage, which mortgage includes the above leasehold among other property; and

Whereas, the said lease, together with all improvements thereon, has been sold to the Cherokee Construction Company at execution sale; and

Whereas, Joseph M. Spradling, of Hartford, Arkansas, desires to purchase all of the rights of the Cherokee Construction Company and the rights of the American Smokeless Coal Company if it has any, in and to said lease and the improvements on said leased premises; and

Whereas, the said Cherokee Construction Company and the American Smokeless Coal Company are willing to sell, assign, and convey the said lease, with all of the improvements thereon, to the said Joseph M. Spradling;

Now, Therefore, This Agreement Witnesseth:

That for and in consideration of the sum of Four Thousand Dollars ($4,000.00) the said Cherokee Construction Company and the American Smokeless Coal Company do hereby sell, assign convey and transfer the said lease, together with all the improvements thereon, to the said Joseph M. Spradling, Fifteen Hundred dollars ($1,500) of said consideration to be paid by the said Spradling to the Cherokee Construction Company upon the execution of this instrument, and the balance of said consideration, Twenty-five hundred dollars ($2,500) to be paid by the said Spradling to the said
2803 Cherokee Construction Company within thirty (30) days after the said Cherokee Construction Company releases, or causes to be released, the said lease, with the improvements thereon, from the said mortgage of date January 28, 1903, from the American Smokeless Coal Company to the North American Trust Company; the said property to be released from said mortgage according to the provisions contained in said mortgage.

Second: The Cherokee Construction Company and the American Smokeless Coal Company do hereby covenant and agree to idemnify and save harmless the said Joseph M. Spradling, his heirs and and assigns, from any claim or claims arising under said mortgage and Deed of Trust, and covenant and agree to forever warrant and defendant the said Joseph M. Spradling, his heirs and assigns, in the free and undisturbed possession of said property from and because of any person or persons claiming under the said American Smokeless Coal Company or the Cherokee Construction Company.

Third: The said Joseph M. Spradling covenants and agrees to assume the payment of all royalties due to the said Boone under said lease for the year 1905 and subsequent years, and to assume all obligations under said lease.

Witness our hands and seals this 30th day of October, 1905.

CHEROKEE CONSTRUCTION COMPANY,

(Seal) By C. E. Ingersoll, Vice President.

Attest: H. E. Yarnall, Secretary.

2804 AMERICAN SMOKELESS COAL COMPANY,

By C. E. Ingersoll, President.

(Seal)

Attest:
H. E. Yarnall,
Secretary.

Joseph M. Spradling.

United States of America,
Indian Territory,
Northern District.

Be It Remembered, that on this day came before me, a Notary Public duly commissioned and acting within and for the District aforesaid, C. E. Ingersoll, to me personally well known to be the Vice President of the Cherokee Construction Company and the President of the American Smokeless Coal Company, corporation, and the person whose name is subscribed to the above and foregoing instrument, and acknowledged to me that he had executed the said instrument as such Vice President and President, for and on behalf of said corporations as his and their free act and deed, and for the purposes and consideration therein mentioned.

Witness my hand and notarial seal this 11th day of April 1907.

FRANK C. LABOURIN,
(Seal) Notary Public.

My commisison expires November 23. 1909,

Certificate of Record.

State of Arkansas,
County of Sebastian,
Greenwood, District.

2805 I, John E. Tatum, Clerk of the Circuit Court and Ex-Officio Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the tenth day of May, A. D. 1907 at 1 o'clock P. M. and the same is now duly recorded with the acknowledgments and certificates thereon, "Record Book 32" page 621.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 14th day of May, A. D. 1907.

JOHN E. TATUM.
Circuit Clerk and Ex-Officio Recorder.
By R. A. Harper, Deputy Clerk.

2806 Plaintiff's Exhibit 111.

Deed of Release.

Whereas, on the 13th day of January, 1903, T. W. M. Boone and Ella Boone, his wife, leased to the Prairie Creek Coal Company, its successors and assigns, the following described real estate located in the Greenwood District, Sebastian County, Arkansas, to-wit:

The West half of the Southeast quarter of the Northwest quarter of the Southwest quarter of the Northwest quarter which lies north of Cherokee Creek, and the south twenty-three (23) acres of the Northwest quarter of the Northwest quarter, all in section Twenty-seven (27); and the East half of the Northeast quarter, the East half of the Northwest quarter, the Southwest quarter of the Northeast quarter north of Cherokee Creek, and the East half of the Northeast quarter of the Southeast quarter, all in Section Twenty-eight (28), Township Five (5) North, Range Thirty-one (31) west; for a period of twenty-five years from the date of said lease with the privilege to the Prairie Creek Coal Company, among other things, of removing the coal from under the premises so leased; and

Whereas, the Prairie Creek Coal Company has heretofore conveyed its rights under this lease to the American Smokeless Coal Company; and

2807 Whereas, the American Smokeless Coal Company has made a certain Deed of Trust, dated January 28th, 1903, to the North American Trust Company, Trustee, to secure a certain mortgage, which mortgage includes the above leasehold among other property; and

Whereas, the Cherokee Construction Company has purchased at execution sale the said lease, together with all the improvements thereon; and

Whereas, Joseph M. Spradling desires to purchase from the Cherokee Construction Company the said lease, together with the improvements thereon; and

Whereas, the Cherokee Construction Company is the owner of all of the bonds, except one, secured under the said mortgage of January 28, 1903, given by the American Smokeless Coal Company to the North American Trust Company, Trustee, and now outstanding; and

Whereas, it is provided in Section one, Article Nine of said mortgage that from time to time the holders of two-

thirds in amount of all the bonds secured by said mortgage and outstanding at the time may be an instrument or instruments in writing, signed by two-thirds in interest of such bondholders shall have power to assent to and authorize the release of any part of the property held by the Trustee under said mortgage;

Now, therefore, the Cherokee Construction Company,
2808 as the owner of more than two-thirds of the bonds secured and outstanding under said mortgage, for and in consideration of the sum of Four thousand dollars ($4,000.00) in hand paid, the receipt of which is hereby acknowledged, does hereby release, and forever discharge the said lease and real estate above described, together with all the improvements thereon, from the terms, provisions and obligations of said mortgage of date January 28, 1903 and recorded in the office of the Circuit Clerk and Ex-Officio Recorder at Greenwood for Sebastian County, Arkansas in Book 31, page 15.

In Testimony Whereof, the said Cherokee Construction Company has caused this instrument to be executed by its proper officers and the seal of the company thereto affixed this 30th day of October, 1905.

CHEROKEE CONSTRUCTION COMPANY
By C. E. Ingersoll, Vice-President

(Seal)

Attest:
H. E. Yarnall,
Secretary.

Commonwealth of Pennsylvania,
City and County of Philadelphia—ss.

Be It Remembered, that on this day, came before me, a Notary Public, duly commissioned and acting within and for the City and County aforesaid, C. E. Ingersoll, and H. E. Yarnall, to me personally well known to be the Vice President and Secretary respectively, of the Cherokee Construction
2809 Company, a corporation, and the persons whose names are subscribed to the above and foregoing instrument, and acknowledged to me that they, and each of them had executed the said instrument as such Vice President and Secretary for and on behalf of said corporation as their and its free act and deed and for the purposes and consideration therein mentioned.

Witness my hand and notarial seal this 30th day of October, 1905.

OSCAR H. PRICE
Notary Public.

(Seal)

My commission expires at the end of next session of the Senate.

2810 Plaintiffs' Exhibit 158.

Mine Car Lease.

Between

Mammoth Vein Coal Company and Coronado Coal Company

For and in consideration of $1.00 per month per car the Mammoth Vein Coal Company hereby leases to the Coronado Coal Company Sixteen (16) mine cars for a period of one (1) year from date. It being understood that the Coronado Coal Company are to keep those cars in repair and return them to the Mammoth Vein Coal Company at any time the Mammoth Vein Coal Company wishes them and in as good repair as when rented to the Coronado Coal Company.

The Mammoth Vein Coal Company shall have the right at any time to demand the return of these cars and the Coronado Coal Company shall return them within 15 days after receiving notice to return the cars in as good repair as when received.

The amount of rental shall be paid on or before the 25th of the month for the preceeding month. In case any car is destroyed while in the possession of the Coronado Coal Company the Coronado Coal Company shall either pay the Mammoth Vein Coal Company the cost price of the car or furnish them a car to take its place of the same type and as
2811 good as when received.

MAMMOTH VEIN COAL COMPANY
By H. Denman,

CORONADO COAL COMPANY
By H. Denman.

Midland, Ark., January 3, 1910.

2812 Exhibit No. 114.

"Lease on Coal Land."

This agreement, made this first day of October, One Thousand Nine Hundred and Four (1904) by and between Mammoth Vein Royalty Company, of the first part, hereinafter designated "Lessor", and the Mammoth Vein Coal Company, of the second part hereinafter designated "Lessor", Witnesseth:

That Whereas, the said Lessor has become and is the owner of a coal land hereinafter described which is acquired for the purpose of leasing the same for a royalty to the end that he might receive royalties on a large production of coal from the said hereinafter described premises,

Now Therefore, the parties hereto enter into the following covenants and agreements, to-wit:

First: The said Lessor, for and in consideration of the rents, royalties, covenants and agreements hereinafter mentioned and specified on the part of the said Lessee to be paid and performed, has leased, demised and let and does hereby lease, demise and let unto the said Lessee for the term of seventeen (17) years from the first day of October, 1904, unless 500,000 tons of coal be mined by the Lessee from the premises before the expiration of seventeen years in which event the lease shall terminate when 500,000 tons of
2813 coal shall have been mined, the following premises situated in the County of Sebastian, State of Arkansas, to-wit: SE ¼ of SE ¼ Section 3; SW ¼ of SW Section 2; Lots 15, 16 and 21 of Section 2; all in Township 4 North, Range 32 West.

Second: With the exclusive right to dig for and mine, remove and dispose of coal in, under and upon the above described land.

Third: The right to cut and use for the purpose of mining operations, and timber on said above described land.

Fourth: The right to erect miners' houses, tipples and such other buildings or works, including water supply reservoirs, as may be necessary or convenient in the operation of the said mine, and to erect and operate coke ovens upon any portion of the said described tract of land, together with right to dig, hew and use for the purpose of said mining operations such building stones, fire clay and other building materials as may be found upon said tract of land above described.

Fifth: The right to use such running water as may be found upon any the the tracts hereby leased, or found upon the surface which covers any of the coal hereby leased, to the extent that the Lessor has the right to use the same:
2814 Provided, such use of the said water shall in no way interfere with its use on other land now owned or which may hereafter be acquired by the said Lessor.

Sixth: The said Lessor hereby covenants and agrees to and with the said Lessee that it shall and may, at all times hereafter during the continuance of the term hereby granted, peacefully and quietly have, hold, possess and enjoy the premises and exercise the rights hereby demised, without let or hindrance by or from the said Lessor or by or from any person or persons lawfully claiming the same or any part thereof, by, from or under him.

Seventh: The said Lessor hereby retains and reserves the right, and the Lessee hereby covenants that the said Lessor shall have the right, by his officers, servants, agents and engineers, at all times to enter into and upon the said premises, both on and below the surface, and to inspect, examine and make surveys thereof; and the said Lessee doth covenant and agree to accurately survey, not less frequently than once in every six (6) months, all new mine workings, entries air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than two hundred (200) feet to one (1) inch, and to furnish the Lessor, not less frequently than once in six months, with an accurate copy of said map.

Eighth: The said Lessor further reserves during the
2815 continuance of this lease, for himself and his assigns and lessees, and any and all of them the right of way over any and every part and portion of the herein demised premises for roads, railways, waterways and side tracks, and also such use as they and any and all of them may desire of all tracks, roads railways, waterways and side tracks constructed by the said Lessee upon the herein demised premises as provided hereinafter in this paragraph. Provided, that proper compensation shall be made by the said Lessor and his assigns and lessees, and any and all of them, for such use of said tracks, roads, railways, waterways and side tracks constructed by the said Lessee, such proper compensation, if not mutually agreed on, to be determined by arbitration as hereinafter provided.

Ninth: It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all the coal contained therein; and to accomplish this end, among others, the Lessee expressly agrees to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual mining of the largest amount of coal from the entire premises hereby demised; and for the purpose of as-
2816 suring this end to the Lessor with greater certainty, the Lessee agrees to maintain in good working order all entries and gangways, air courses, slopes, shafts and planes until the coal between the faces of any of the said entries, gangways, air courses, slopes, shafts or planes and that portion of the boundary of the demised premises towards which any of said entries, gangways, air courses, slopes, shafts or planes may be directed is mined out as fully as it can be mined out by first class mining methods, or until the Lessor gives his consent in writing to the abandonment of any of the same. And the Lessee agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings underground shall be laid out and conducted in a thorough and substantial manner and in accordance with first class mining methods, and expressly with a view to the fullest possible development of the demised premises; and that the Lessee shall maintain pillars in the mine or mines of dimensions fully sufficient to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out

And it is further expressly agreed that the Lessee shall
2817 conduct no stripping operation on the coal beds hereby demised without the written consent of the Lessor being first had, and that the Lessee shall leave intact at all times a stip of coal fifty yards in breadth next adjoining the boundaries of the demised premises, except where the said strip is penetrated by the principal slope and air course at the outcrop of the coal bed.

That the Lessee shall maintain all buildings and machinery and other appurtenances to the mine in good condition and working order; that it will not do, or permit, or suffer to be done any damage or injury to the said premises, property or appurtenances; that it will so arrange and conduct the said mining operations as to cause no interference either with the use by the said Lessor of the surface covering the coal hereby leased, excepting that surface hereby demised or with land

of the Lessor bounding on the tracts of land hereby leased, excepting surface hereby demised, or with land of the said Lessor bounding on the tracts of land hereby leased; and that the said mining operations shall not injure or endanger any buildings or structures which the said Lessor now has standing or may hereafter cause to be constructed on the said surface or bounding lands.

The Lessee hereby expressly agrees that it will at all times keep the workings of the mines operated by it on the
2818 said demised premises for water and dangerous gases.

Tenth: The said Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the State of Arkansas regulating the mining of coal and agrees to protect the Lessor against the violation of said laws by said Lessee.

Eleventh: As a part of the consideration for this lease the said Lessee hereby covenants and agrees to assume all liability in the operation of said mine and hereby agrees to protect and save harmless the said Lessor from any claim, damage, personal injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employees in the operation of said mine.

Twelfth: The said Lessee covenants that it will at the termination of this lease, deliver up and surrender to the said Lessor, to be and remain the property of the same, all and singular the premises, rights and privileges herein demised and leased, together with all the mines, entries, openings, tramways, inclines, chutes tipples, tipple houses, cross ties, sleepers, sills and appurtenances whatsoever, in good working order and repair; but on such termination of this lease the working tools and implements used in mining, together with all machinery, miners' houses, engines, fans, boil-
2819 ers, pumps, ropes, weighing scales, rails and pit cars placed upon said premises by the said Lessee shall be and remain the property of the said Lessee. But it is hereby expressly agreed that upon such termination of this lease the said Lessor shall have the right as regards the said working tools, mining implements, machinery, tracks, pit cars, rails and miners' houses, declared as aforesaid to be the property of the said Lessee, to purchase the same from the said Lessee at a fair market price, to be determined, if not mutually agreed on, by arbitrators as hereinafter provided for.

If the said Lessor shall not avail himself of such right of purchase, then the said Lessee may remove the same, provided all royalties then due the said Lessor by the said Lessee be paid and all and singular the other covenants and agreements of this lease be performed, such right or removal, however, to terminate ninety (90) days after the termination of said lease.

Thirteenth: The said Lessee hereby covenants and agrees that it will not at any time during the term of this lease assign, either voluntarily or involuntarily, sublet or transfer the same or any part thereof, or sublet or demise the said premises or any part thereof, to any person or persons or corporation whatsoever, without the written consent of the said Lessor, under his seal, first had and obtained; but said Lessee may construct necessary dwellings for its em-
2820 ployees upon the tract as aforesaid leased for, in part, that purpose, and may sublet such dwellings to its employees while they remain in the service of said Lessee.

Fourteenth: The said Lessee hereby covenants and agrees to pay to the said Lessor a rent or royalty equal to eight (8) cents per ton on each and every ton of two thousand (2,000) pounds of coal mined or dug from any of the demised premises, but the said rent shall amount to not less during any certain period than the minimum rental described hereinafter for said period.

The minimum royalty throughout the year commencing October first, 1904, and for each year thereinafter during the term of this lease, shall be Two Thousand Four Hundred Dollars ($2,400.00) and in addition thereto the Lessee shall pay the Lessor eight (8) cents per ton of two thousand (2,000) pounds on all coal mined or dug from the demised premises in excess of thirty thousand (30,000) tons during any of said year.

Fifteenth: And the said Lessor, if he so elects, shall have the right to erigh all coal and coke loaded on cars before the same are shipped, and the said Lessee covenants that the said Lessor may so weigh all said coal and coke before shipment without let or hindrance, from all the operations of the said Lessee; and shall any dispute arise as to the accuracy of the scales on which the coal and coke are weighed,
2821 by the said Lessor or the said Lessee, then such dispute shall be settled by testing the said scales by government weight.

The said Lessee further covenants and agrees to furnish within five (5) days from the last day of every calendar

month at the office of the Lessor in Fort Smith, Arkansas, a report properly authenticated, showing the coal mined, or dug and used or removed from the said mine during the preceding calendar month, and to pay to such person or corporation as said Lessor shall direct the amount of the rent or royalty due for the said preceding month; and if any coal shall have been taken from the said premises and wasted or left as slack coal in the mines, and not weighed and not accounted for the quantity of the same shall be ascertained, an account rendered for the same and payment made at the rate above named. And the Lessee covenants that it will keep a book or books of account of the mining and shipping of coal and coke, and that said book or books shall be open to the inspection of said Lessors and their agents or attorneys for the purpose of comparing and verifying the accounts rendered.

Sixteenth: Should the royalty on coal mined on any year not amount to the minimum rental for that year, then the said Lessee covenants and agrees that it will pay to the said Lessor dead rentals so that the same shall equal the minimum rental aforesaid, but the said Lessee shall have the privilege of mining during the next succeeding year, free from
2822 royalty, such a quantity of coal over and above the quantity which will yield the said minimum rental for that year, as will in royalties reimburse the said Lessee for the dead rentals paid during the preceding year.

Seventeenth: The Lessee shall pay royalties or rentals as set out above as follows:

The minimum royalties shall be payable quarterly in advance, on the first days of January, April, July and October of each year.

The royalties or rentals in excess of one-twelfth (1/12) of the minimum annual royalties or rentals, shall be paid on the twentieth day of each calendar month next succeeding that in which the coal was mined, and shall be paid, in both cases at the principal office of the Lessor at Ft. Smith, Ark.

Eighteenth: The said Lessee covenants and agrees to pay all taxes that may be assessed against the demised premises and the improvements thereon, and upon the coal mined or coke manufactured during the continuance of this lease.

Nineteenth: Any difference as to the proper manner of mining or as to the quantity of available coal to be left standing before abandoning any entry, room, shaft, working or

other opening, or any difference whatsoever which may arise as to the method of skillfully conducting said mining operation and any other matter herein specifically referred
2823 to arbitrators, shall, upon motion of either party to this lease, be referred for settlement to a board of arbitrators, which shall be constituted and chosen in the following manner: The party alleging such non-performance or breach by the other shall give ten days' notice in writing to the other party of the appointment of an arbitrator to act hereunder, and thereupon it shall be the duty of the party so notified to appoint within five (5) days an arbitrator to act with the one thus appointed. In the event of a failure to appoint within five (5) days, the other party may appoint one in his or their stead. In the event that the two thus appointed shall fail to agree, they shall select a third party, and in the event of their failing to agree on the selection of such third member within five (5) days after their failure to agree as to the matter or matters in dispute, the third member may, on application of either party, be appointed by the Judge of the United States Circuit Court for the Western District of Arkansas. The decision of the majority of the three arbitrators when finally settled shall be binding and conclusive upon the parties hereto.

Twentieth: It is understood and agreed that the provisions of a certain contract by and between the Mammoth Vein Coal Company and the Midland Valley Railroad Company, of date April 18th, 1904, covering the shipping and routing of coal and coke from the lands demised herein shall be bind-
2824 ing upon the said Lessee during the life of this agreement; a copy of said contract of date April 18th, 1904, is attached to and made a part hereof.

Twenty-first: It is further covenanted and agreed by and between the parties hereto that in the event that the said Lessee shall delay or refuse to comply with the terms of this lease and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessor shall, at his option, after sixty (60) days' notice to the Lessee, have the right to re-enter upon the demised premises as full and complete possession as if the terms of this lease were fully performed and ended by limitation.

Twenty-second: In the event of such termination of this lease for a breach of contract by the Lessee, the said Lessee shall not have the right to remove from the premises any of the coal which may have been mined previous to such termi-

nation of this lease, or working tools, machinery or other property, until the said Lessee has made full satisfaction to the Lessor for any and all damage which he may sustain by reason of such delay or refusal to comply with the terms of this lease; and in that event none of said properties aforesaid shall be removed from said premises until all royalties and other payments due the Lessor hereunder shall have been paid to the said Lessor; otherwise, such coal, tools,
2825 machinery and property shall become the property of the said Lessor. And in the event of any controversy arising out of any manner in this paragraph contained, the same shall be referred to the board of arbitrators as hereinbefore provided, and all said properties shall remain on said premises until a decision is reached by the arbitrators.

Twenty-third: It is hereby expressly agreed that nothing herein contained shall interfere with the right on the part of the said Lessor to distrain for rent due and in arrears under the terms of this lease.

Twenty-fourth: It is hereby agreed that all rights vested in the said Lessor by this lease shall pass to and vest in his successors and assigns, and that all covenants and agreements on the part of the said Lessee to be kept and performed shall be kept and performed by the said Lessee and by its heirs, executors, administrators and assigns, or by the successors and assigns, or by the successors and assigns of the Lessee if the Lessee is a corporation, for the benefit and advantage of the Lessor and his successors and assigns.

Twenty-fifth: It is hereby agreed that the said Lessee shall keep the said Lessor informed of the place of its offices and the names of its agents, whether in this state, or elsewhere; and that the said Lessee informed of any change in or transfer of the said Lessor under this lease.

2826 Witness the hands and corporate seals of the parties herto in duplicate, each an original, the day and date first above written.

(Seal) MAMMOTH VEIN ROYALTY CO.
F. Bache, President, Lessor,

Attest: W. J. Schols,
Secretary.

(Seal) MAMMOTH VEIN COAL COMPANY,
By F. Bache, President.

Attest: Heber Denman,
Secretary.

2827 Contract.

This agreement entered into this Eighteenth day of April 1904, by and between the Mammoth Vein Coal Company, an Arkansas Corporation, its successors and assigns, party of the first part, and the Midland Valley Railroad Company, an Arkansas Corporation, its successors and assigns, party of the second part, Witnesseth:

That, Whereas, the Mammoth Vein Coal Company is the owner of that certain land located in Sebastian County, State of Arkansas, described as follows:

SE ¼ of SE ¼ Section 3; SW ¼ of SW ¼ Section 2; Lots 15, 16 and 21 of Section 2; all in Township 4 North, Range 32 West;

And, Whereas, the Midland Valley Railroad Company is operating a line of railroad over parts of said above described land;

And Whereas, the Railroad has built certain tracks to a coal tipple located on said above described lands without expense to the Mammoth Vein Coal Company;

Now, therefare, Be It Agreed,

1st. That the Mammoth Vein Coal Company shall ship all coal mined from the aforesaid tract of land to or towards the destination by way of the Midland Valley Railroad. And the Mammoth Vein Coal Company agrees to pay to the
2828 Midland Valley Railroad Company twenty-five cents (25c) per ton as agreed on liquidated damages for any coal shipped in violation of this clause.

2nd. The Midland Valley Railroad Company agrees at all times to furnish the Mammoth Vein Coal Company sufficient cars at its tipples to enable it to operate its mines not less than ninety percent (90%) of the number of hours per month that any other mine on the lines of the Midland Valley Railroad is operated.

Witness the hands and corporate seals of the parties hereto, in duplicate, each an original, on the day and date first above written.

MAMMOTH VEIN COAL COMPANY,
By F. Bache, President.

Attest: Heber Denman,
Secretary.

MIDLAND VALLEY RAILROAD COMPANY,
By C. E. Ingersoll, President.

Attest: H. E. Yarnall,
Secretary.

2829 Mr. Drinker: Now, we offer, from page 2371 of the old record, Plaintiff's Exhibit 172 in the former trial, being the decree of this court in the case of Coronado Coal Company vs. Sebastian County Coal Company, dated March 10, 1915.

(Said Plaintiffs' Exhibit 172, so offered in evidence, is in words and figures following, to wit:)

"In the United States District Court, for the Western District of Arkansas, Fort Smith Division.

Coronado Coal Company, et al., Plaintiff,
vs.
Sebastian County Coal Mining Co., et al, Defendants.

Order.

On this the 10th day of March, 1915, this cause coming on for final determination upon the application of the defendant Sebastian County Coal & Mining Company to cancel and annul the lease to the following described real estate in Sebastian County, Arkansas, held by the Mammoth Vein Coal Mining Co. one of the plaintiffs herein:

"Southwest diagonal halves of Lots Eight (8) and Fourteen (14), Lots Three (3), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Seventeen (17) of the North Half (N-2) of Section Two (2), and Lots Seven (7) and Fourteen (14) of the North Half (N-2) of Section Three (3), Township Four (4) North, Range Thirty-two (32) West, containing three hundred sixty (360) acres, be the same, more or less;

Said lease being a lease executed on the 10th day of
2830 July, 1905, by the American Smokeless Coal Company to the Mammoth Vein Coal Mining Company for a term of thirty years from August 1, 1905, said lease now being owned by the defendant, the Sebastian County Coal Mining Company,

And upon the application of the defendant Sebastian County Coal Mining Company to cancel and annual, the lease to the Prairie Creek Coal Mining Company to the following described lands in Sebastian County, Arkansas:

Lots one (1), two (2), nine (9), eleven (11) and twelve (12), Section One (1); Lot Seven (7) and the Northeast diagonal halves of Lots Eight (8) and Fourteen (14), Section Two (2), all of Lot ten (10), except the North two hundred and eighty (280) yard thereof and that part of said Lot West of the Midland Valley Railroad right of way, in Section one (1); all in Township Four (4) North, Range Thirty-two (32) West; and three (3) acres, more or less, out of the West side of Lot Two (2), Section Six (6), Township Four (4) North, Range Thirty-one (31) West, being all of said lot West of James Fork Creek; being three hundred and forty-eight and forty-eight hundredths (348.48) acres, more or less, which the lessor owns in fee simple; and

The North two hundred and eighty (280) yards of lot ten (10), Section One (1), Township Four (4) North, Range Thirty-two (32) West, and that part of said Lot West of the Midland Valley Railroad right of way, being twenty-five and one-tenth (25.1) acres, more or less, in which the Lessor owns the mineral right; and,

2831 Lots three (3), four (4), five (5), six (6), seven (7), eight (8), thirteen (13) and fourteen (14) Section One (1), Township Four (4) North, Range Thirty-two (32) West, being three hundred and thirteen and Twenty-six hundredths (313.26) acres, more or less, which the Lessor holds under a coal lease for a term of twenty years from May 31, 1900; said lease having been executed to the Prairie Creek Coal Mining Company by the Cherokee Construction Company on the 18th day of June, 1906, and said lease being now owned by the defendant Sebastian Coal & Mining Company.

And upon the application of the defendant Sebastian County Coal & Mining Company to cancel the lease to the following described property executed to the Mammoth Vein Coal Company, said lease now being owned by the Sebastian County Coal & Mining Company;

The Southeast Quarter (SE¼) of Section Thirteen (13), Township five (5) North, Range Thirty-two (32) West, Sebastian County, Arkansas, except one (1) acre of said land in square form upon which the dwellings and adjoining buildings of the Bishops are situated, upon which lease Mine #6 of the Lessor is situated; and,

The Northeast Quarter (NE/4) of Section Thirteen (13), and the North half (N/2) of the Northwest Quarter (NW/4), and the North Half (N½) of the Southeast Quarter (SE¼) of the Northwest Quarter (NW/4) of Section Thirteen (13), Township Five (5), North, Range Thirty-two (32) West, Sebastian County, Arkansas, except one (1) acre of said
2832 land in square form upon which the dwellings of Arminta Bishop are situated; and,

The West part of the Northwest Quarter (NW¼) of the Southwest Quarter (SW/4) of Section Eighteen (18), Township Five (5), North, Thirty-one (31) West, lying west of the center of James Fork Creek, containing Thirty (30) acres, more or less, in Sebastian County, Arkansas, except one (1) acre of said land in square form upon which the dwellings and buildings of the Bishops and Andersons are located.

On this day the defendant Sebastian County Coal and Mining Company having offered in open court and in writing to waive any and all claims and demands of every kind whatsoever which they might hold or claim to hold against the Receiver in this cause, or against the Lessees, the Mammoth Vein Coal Company, the Mammoth Vein Coal Mining Company, the Prairie Creek Coal Mining Company, under and by virtue of the covenants contained in the several leases executed to the aforesaid three companies, and the court having heretofore taken testimony upon the said applications of the defendant Sebastian County Coal & Mining Company, the court being well and sufficiently advised in the premises finds that it is not advisable for the Receiver to adopt the aforesaid leases, and further finds that the Prairie Creek Coal Mining Company, Mammoth Vein Coal Mining Company and Mammoth Vein Coal Company are insolvent and are unable to perform and carry out the covenants of the said leases owned by them respectively, and the court further finds that it is to the best interests of the estate now in the hands of the Receiver that the offer of the defendant Sebastian County
2833 Coal & Mining Company releasing any and all claims of whatsoever kind and character which they might hold or claim to hold against the said Prairie Creek Coal Mining Company, Mammoth Vein Coal Company and Mammoth Vein Coal Mining Company be accepted.

It is therefore, by the court considered ordered and adjudged that the Receiver be and he is hereby directed to surrender to the defendant the Sebastian County Coal & Mining Company the possession of the property described in said

three leases free from any and all claims of said Lessees or the Receiver against the Sebastian County Coal & Mining Company, and it is considered ordered and ajudged that the leases now held by the Prairie Creek Coal Mining Company, the Mammoth Vein Coal Mining Company and the Mammoth Vein Coal Company, as aforesaid, be and the same are hereby cancelled and annulled, and the right to the possession of said property from and after this date, and the title thereto, together with all appurtenances thereunto belonging, so far as the claims of any of the said Lessees or the parties to this suit are concerned, as against the Sebastian County Coal & Mining Company is hereby forever quieted in the Sebastian County Coal & Mining Company; (provided, that any and all claims and causes of action of the said Lessees against other persons for damages and injury to said property and said Lessees aid leaseholds as heretofore done, shall remain in the said Lessees or the Receiver for the benefit of said Lessees, the Court herein reserving the right to make all proper and necessary orders for the prosecution of said suit or suits for the recovery of said damages.

2834 It is further ordered that upon the delivery of the possession of the above described property and real estate to the defendant Sebastian County Coal & Mining Compan, that all claims and demands between the Sebastian County Coal & Mining Company, and any of the parties to this action, shall be and the same are forever settled; Provided, that any right, claim or action that the Lessees may have against third person for the injury to or destruction of the property embraced in said leaseholds shall in no wise be affected by this order. It is further ordered that each party hereto the Receiver and Sebastian County Coal and Mining Company, pay all costs incurred by him or it, and this cause is dismissed as to said Sebastian County Coal and Mining Company.

(Signed) FRANK A. YOUMANS, Judge.

Filed March 10, 1915. Wm. S. Wellshear.

Appearance:
James B. McDonough,
Kimpel & Daily."

Mr. Drinker: We now offer in evidence Plaintiffs' Exhibit 173 in the other trial, beginning on page 2373 of the old record, being the decree of this court in the case of the Coronado,

Coal Company vs. Sebastian County Coal Company, dated September 4, 1915.

(Said Plaintiff's Exhibit 173, so offered in evidence, is in the words and figures following, to-wit:)

"Plaintiffs' Exhibit 173

2835 Coronado Coal Company, et al. Plaintiff,
No. 242. vs. Equity.
Sebastian County Coal Company, et al, Defendants.

On this the 4th day of September, 1915, same being a day of the June term of this court, came on to be heard the petition of T. W. M. Boone for cancellation of a lease on certain land lying and being in the Greenwood District of Sebastian County, Arkansas, in which said lease T. W. M. Boone and Ella Boone, his wife, were grantors, and the Prairie Creek Coal Company was grantee, and which said lease had been transferred by various conveyances until it is at this time held by the Coronado Coal Company and the Sebastian County Coal Co.

Said Petition alleged the failure of the said Coronado Coal Company or the Sebastian County Coal Co. or those under whom they held, to keep the covenants and conditions of said lease, and alleged that there was due the said T. W. M. Boone, Lessor, royalty under said lease in the sum of Two Thousand Four Hundred Thirty-six and 69/100 ($2436.69) Dollars, which said royalty was long past due, and said petition alleged that by the terms and conditions of said lease the said T. W. M. Boone had a lien upon all the buildings, improvements and machinery on the said premises owned or controlled by the said Coronado Coal Company, and the Court finds the facts to be:

That the said T. W. M. Boone did on the 13th day of January, 1903, made a lease upon

The West half of the Southeast quarter of the Northwest Quarter (W½ SE¼ NW), and the Southwest Quarter
2836 of the Northwest Quarter (SW¼ NW¼), which lies North of Cherokee Creek, and the South Twenty-three acres of the Northwest Quarter of the Northwest Quarter (S. 23 acres of (NW½ NW¼) all in Section twenty-seven (27), and the East half of the Northeast Quarter (E½ NE¼), the East half of the Northwest Quarter of the Northeast Quarter (E½ NW¼ NE½), the Southwest Quarter of the Northeast Quarter (SW¼ NE¼) North of Cherokee Creek, and the East

half of the Northeast Quarter of the Southeast Quarter (E½ NE¼ SE¼), all in Section twenty-eight (28), Township Five (5), North, Range thirty-one (31) West, lying and being in the Greenwood District of Sebastian County, Arkansas to the Prairie Creek Coal Company.

That the said lease was duly recorded on the 16th day of January, 1903, in Record book 31 at page 5 in the Recorder's office at Greenwood, Arkansas.

The Court further finds that by certain mesne conveyances the said leasehold came into the possession of the respondent, the Coronado Coal Company, and that the said Coal Company operated a coal mine located upon the said above described premises, and that by the terms of said lease, the said Lessors were to receive a royalty of five cents per ton on all coal taken from the said leased premises, and a premium royalty of Twelve Hundred ($1,200.00) Dollars per annum; and

The Court finds that no royalty has been paid to said Lessors for royalty according to the terms of said lease since December 1913, and that there is now due said Lessors for royalty under said lease the sum of Two Thousand Four Hundred thirty-six and 69/100 ($2436.69) Dollars;

2837 The Court further finds that the mining plant located upon said property has been destroyed, and that the said Coronado Coal Company is insolvent and unable to further continue the operation of said mine or to rehabilitate said property; and

The Court further finds that under the terms of said lease that the said Lessors have a lien upon the building, improvements and machinery on said leased premises owned and controlled by the said lesses; and

The Court further finds that the terms of said lease have been violated, and that the prayer of the Petitioner for the cancellation of said lease should be granted.

The Court further finds that the value of the buildings, improvements and machinery now on said leased premises is less than the amount of royalty due the said Lessors.

It is Therefore by the Court considered, ordered and adjudged that the prayer of the Petitioner be granted and that the said lease executed on the 13th day of January, 1903 by the Petitioner T. W. M. Boone and Ella Boone, his wife, upon the above described real estate, be, and the same is hereby cancelled, set aside and held for naught, and that the

said Lessors have a lien upon all of the buildings, improvements and machinery located upon the said leased premises owned or controlled by the said Coronado Coal Company of the Sebastian County Coal Company for the payment of said royalty, and the Receiver of the said Coal Companies is hereby authorized and instructed to turn over and deliver to the said T. W. M. Boone or his legal representatives
2838 possession of the above described premises together with all the buildings, improvements and machinery belonging to the said Coronado Coal Company or the Sebastian County Coal Company located on the said leased premises, and the said T. W. M. Boone is hereby instructed that if, after disposing of said buildings, improvements and machinery, as above set out, there should remain in his hands any monies after paying said royalty that he account to the Receiver of the said Coronado Coal Company for the same.

(Signed) FRANK A. YOUMANS, Judge.

Filed September 4, 1915. Wm. S. Willshear, Clerk. O. K. Kimpel & Daily."

2839 Mr. Drinker: We will go on with the documentary evidence.

Page 2425 of the old record, from the convention of the International organization for 1916, page 448, showing the report of the credential committee, showing that Peter R. Stewart, Ft. Smith, Arkansas, voted one vote for No. 21.

Mr. Warrum: The defendants renew their objection to this class of testimony.

The Court: Let it go in.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: From page 2426 of the old record, pages 81 and 82 of this same volume, page 205, and page 790, constituting the reports of the committees, appointment of committee on officers' reports, and the adoption by the convention of the items in the report, entitled "Litigation".

(Which said excerpts from the record are in the words and figures following, to-wit:)

"Litigation.

This administration has been confronted with almost every conceivable form of opposition by the enemies of our move-

ment. We have been engaged in litigation and our people have been subjected to the worst form of persecution at the incitation of the coal companies and their emissaries in the various non-union sections of the country."

"During the trouble in Arkansas a number of our members and representatives were indicted in the Federal Court and some were fined and imprisoned."

2840 "Thus it will be seen by the attempts set forth in these proceedings that our enemies have been doing all in their power to menace the progress of our organization. Numerous other cases of injunction and litigation have been encountered in defending our people from prosecution and in protecting the organization's financial resources, but we will press, vigorously opposing under all circumstances any attempt to throttle organization by such illegal methods. We will fight to the utmost at all times to defend our persecuted fellow workers who are the innocent victims of powerful interests which would destroy the right of the men of labor to organize and enjoy the right of the men of labor to organize and enjoy the benefits thereof."

"The President announced the following appointments:

Committee on Officers' Reports.

John T. Dempsey, District No. 1.

A. G. Morgan, District No. 22.

Frank Hefferly, District No. 12.

John McLennan, District No. 15.

Thomas Kennedy, District No. 7.

Martin J. Flyzik, District No. 10.

Joseph Karnstine, District No. 25.

William Hargest, District No. 5."

"Litigation.

Satisfactory settlements of important litigation against the organization seem to indicate that legal impediments to our progress are slowly giving way and we approve of
2841 the action of the organization in its continued fight to have our rights emphasized and recommend approval of this attitude until our rights are amply protected.

The report of the Committee was adopted unanimously."

2842 Mr. Drinker: We offer the deposition of CARL SCHOLZ, taken at Charleston, West Virginia, October 2nd, 1923.

"Carl Scholz, of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Direct Examination

By Mr. Drinker:

"Q. Your name is Carl Scholz? A. It is.

Q. Where do you live?

A. I live at Charleston, West Virginia.

Q. When did you first start in the coal mining business in Arkansas and Indian Territory? A. In July, 1902.

Q. Where?

A. I operated the mines for the C. O. & G. Railroad at Hartshorn and Alderson, Indian Territory it was then, Oklahoma now.

Q. Whom did you succeed in that position?

A. Mr. Franklin Bates.

Q. What, at that time, were the relations between the operators in Arkansas and Indian Territory, and the United Mine Workers?

A. There were no relations. The mines were operated without any contractual relations with the miners.

Q. For the purposes of the understanding of your subsequent testimony, will you define the closed shop, the non-union shop, and the open shop?

A. The closed shop is an arrangement between the mine owners and employes and the United Mine Workers, whereunder each and every employe belongs to the Union,

2843 and the relations between the company and the miners are handled through the medium of the miners, officials. The non-Union arrangement is one where the coal companies protest and object to the recognition of the Union, and do not permit Union members to be employed in the mines. The open shop arrangement is one whereunder the coal companies do not object to their employes belonging to the Union, and have no feeling against any man for belonging or not belonging to the Union—it is left optional with the men—but there are no contractual relations between the coal companies and the Miners' Union.

Q. How long have you been operating coal mines?

A. Since 1895.

Q. Have you operated under the closed shop?

A. I did.

Q. For how long?

A. For one month in the year 1908-1898.

Q. And did you operate under the closed shop from 1904 to 1916? A. We did from 1904 to 1916, yes.

Q. You operated the same mines on the open shop and under the closed shop?

A. I did. I operated the same mines on the open shop and under the closed shop.

Q. You operated under the open shop when?

A. From 1895 to 1908.

Q. Where? A. At Riverside West Virginia.

Q. Have you operated non-Union, where it was closed against the Union?

2844 A. We did before and afterwards again.

Q. During that period had you charge and supervision of the figures showing the cost of operation of the mines, in each capacity? A. I did.

Q. Are you familiar with the relative cost of operation of closed shop and open shop mines, in comparison with one another? A. I am.

Q. Now state any features of operation of closed shop and open shop mines in which the cost of operation is higher or lower in one or the other by reason of the fact that they are operated closed shop or open shop.

A. Closed shop mines are usually, or, I might say, always operated at a higher cost, because of the restricted conditions imposed upon the men by the Miners' Union.

Q. What sort of conditions?

A. For instance, a man is only allowed to do one thing. He cannot fill two jobs. On pumping, for instance, a pumper can do his work in two or three hours in the course of a shift. He is not allowed to do anything else, but must be paid for a full shift for work that only occupies two hours. Where shot firers are employed, he is only allowed to fire shots, which occupies from two to three hours of his time. He can't do any other work during the day, but must hold himself in readiness to enter the mine after the other men have come out, and it usually takes from two to three hours to shoot his mine. Likewise in drivers, and particularly in construction work, the closed shop imposes a serious increase in

2845 cost upon the operator.

Q. And those illustrations and statements you have made affect matters irrespective of the wages or compensation per ton paid to the men?

A. Absolutely. It requires a greater number of men to operate a mine on the closed shop basis than it does on open shop basis.

Q. Did you know Pete Stewart? A. Very well.

Q. When did you first know him, and how long did you know him?

A. I think I first met him in 1904, and knew him constantly up to 1915.

Q. When did you leave the Arkansas and Oklahoma field?

A. In 1917.

Q. And where did you see Pete Stewart, in what connection?

A. I saw him frequently at McAlester, Fort Smith, Pittsburg, Kansas, and Kansas City, Missouri.

Q. What mines were you operating between 1904 and 1914?

A. The mines of the Rock Island Coal Mining Company.

Q. Where were they situated?

A. At Hartshorn and Alderson, Indian Territory, and Oklahoma after Oklahoma became a State.

Q. They are in District 21 of the United Mine Workers?

A. Yes.

Q. What States did District 21 comprise, and what States did it comprise in 1914?

A. District 21 included Arkansas, Indian Territory,
2846 and Oklahoma later on.

And Texas? A. And Texas, yes.

Q. That is, such fields as were organized?

A. Yes. Thurber and Cisco were the only mines producing bituminous coal.

Q. In what capacity did you see Pete Stewart during this period?

A. As President and General Manager of the Rock Island Coal Company, on my sides; on his side, as President of District 21.

Q. What questions did you have up with Mr. Stewart at that time?

A. I dealt with Stewart mainly in our meetings about the question of wages, and employment conditions, and contractual relations were discussed.

Q. What meetings?

A. Meetings of the District 21, sub-district of Oklahoma of which I served as Vice-President for three or four years.

Q. You were Vice-President of the Operators Association? A. Yes, of the sub-distric of Oklahoma.

Q. What were the nature of these meetings? Describe them briefly. By whom were they attended, and for what purpose were they called, the big meetings?

A. The large meetings were called in keeping with our wage agreement, two or three months prior to the expiration of the contracts, which we usually held—the first meeting was held at Pittsburg, Kansas. Susequent meetings were held at Kansas City, Missouri.

Q. How often were those meetings held?

A. They were one and two years apart, depending upon the length of our wage agreement. The first two agree-
2847 ments were yearly agreements. The subsequent agreements were made for two year periods.

Q. And how long, about, would those meetings last? You need not go into too great particulars.

A. That depended upon the settlement in the four competitive states. The Southwestern agreement expired in the Fall. The four competitive states agreement expired in March. On two occasions our agreement expired before the agreement of the four competitive states had been completed.

Q. What four competitive states?

A. Illinois, Indiana, Ohio and Pennsylvania; and when the four competitive states agreements were not completed our district officers would not make any settlement with us at all until they were disposed of; so our wage conferences lasted from two to six months.

Q. Not every day?

A. There were adjournments taken for one week, sometimes two weeks at a time, but there was someone usually in Kansas City to see what was going on in the four competitive states, whose meetings were usually held at Indianapolis, so as to be able to take our questions up as soon as the other was disposed of.

Q. You say Stewart attended all those meetings?

A. He was a very regular attendant, yes, as the District officer had to be then.

Q. What other meetings did you see Stewart at in discussion of wage conditions and relations between the min-
2848 ers and operators in District 21?

A. We had sub-district meetings at McAlester which were attended by Stewart in his capacity as District President for the Oklahoma District.

Q. Throughout this period of ten years you have been describing? A. Yes.

Q. Did you know Fred Holt? A. I did.

Q. What was he?

A. He was Vice-President, if I recall, at that time, or Treasurer, I am not sure just what his connection was now, but he had one or I think both positions. He was Vice-President and Treasurer at the time—Secretary and Treasurer.

Q. He was an official of what organization?

A. Of District 21.

Q. Did he attend these meetings? A. He did.

Q. Regularly? A. Quite.

Q. You saw him and talked with him there? A. Oh, yes.

Q. And heard other people discussing these things in his presence?

A. Yes. We also had meetings at Hartshorn, I think on two occassions, when local disputes came up, which would be attended by Stewart and some of the Board Members,

A. Of what? A. District 21.

2849 Q. Did you know James Mullen?

A. Yes. I know Mr. Mullen.

Q. Did he attend these meetings you have spoken of?

A. Yes.

Q. Regularly? A. I think so.

Q. What we he, do you know—what office?

A. I don't know what connection now, whether he was Board Member, whether he was National Board Member or District Board Member. I do not recall his title now.

Q. He might have been one and then the other, for all you know? A. Yes.

Q. Did you know William McLaughlin? A. Yes.

Q. What was he?

A. He was Board Member, but I don't know whether he was District or National Board Member.

Q. District 21? A. District 21.

Q. Did you know William Dalrymple? A. Yes, sir.

Q. Did he attend the meetings regularly? A. Yes, sir.

Q. Did you know Gus Sparling?

A. I don't recall his name. In the latter period of my connection, I often delegated some of our superintendents to attend some of the meetings. It might have been he

2850 came later and I didn't know him.

Q. Did you know Thomas King?

A. Yes, I knew Tom King.

Q. Did he attend these meetings regularly? A. Yes.

Q. What was the purpose of these meetings?

A. The general meetings at Kansas City were held to discuss wages and conditions for the Southwestern Coal Oper-

ators Association and their employes, including Districts 14, 21, 27 or 29, I do not recall which it was now.

Q. What states did they cover?

A. Missouri, Kansas, Indian Territory, Arkansas and Texas.

Q. District 14 was Kansas? A. I think so.

Q. And Missouri was District 25? That is perfectly inadmissible, but there is no use to fight about that. It is right, isn't it?

Mr. Warrum:

I think it was 24.

Mr. Drinker: The Missouri District, whatever it was.

A. Missouri, Kansas, Arkansas and Indian Territory.

Q. But the Missouri District? A. 25, that is right.

Q. Who attended the meetings, representing the miners?

Mr. Warrum: We object, unless the period is stated.

Mr. Drinker: From the period of 1904 to 1914. I do not mean what persons. I mean what official attended the meetings representing the miners?

2851 A. The District officials of Districts 14, 21 and 25, as well as some Board Members of the International Board, and at times International officers.

Q. Anybody attend representing the miners, except the Board Members of the District and the District officers, and the International Board Members and International officers?

A. There were delegates present, of course.

Q. From what? A. From these three districts.

Q. Delegates representing what? A. The miners.

Q. How?

A. Delegates representing the miners and operators.

Q. What organization of miners?

A. United Mine Workers of these three districts.

Q. How are the delegates appointed, by what bodies?

A. The delegates were elected by their own locals.

Q. At these meetings, what were the arguments used by the operators against the demands of the miners for the increase of their wages, and the other demands they made?

A. The principal objection we usually put up was the competition which our coals were subjected to against other coals mined in adjoining fields, particularly the non-Union fields of Colorado, New Mexico, Alabama and Kentucky, the Lignite fields of Texas, and the competition [give] our coals by the coal and oil fields which were just then developing—be-

ing developed—which commenced to enter into our field from the Franklin County territory.

Q. What was the nature of that discussion, the substance of it?

2852 A. We prepared statements showing the cost of our coal against the coals mined in the non-Union fields, which were driving our market closer to the mines and curtailing our production, thereby not only depriving our men of working, but increasing the cost of the output by the smaller tonnage produced. On the other hand, the increased production which our competitors obtained served to lower their cost, enabled them to bring their product very close to the doors of our mines. We held meetings in our camps with our different men, and presented to them statements in printed and written form, so as to convince not only the delegates at these meetings, but also the men at home, of the injustice of the unreasonable demands to them, as well as to ourselves.

Q. What do you mean by the "unreasonable demands"?

A. In 1904—No, that perhaps is not the way to answer this. The demands made on us for wage increases were out of line with the wages paid by our competitors.

Q. Have you a concrete illustration of such a statement prepared by your Association and presented to the miners when Mr. Stewart and the other District 21 officials were present?

A. I have in this statement, which I largely prepared myself at the time. I was very largely interested in the success of the Oklahoma coal fields, not only from the standpoint as a mine operator, but from the standpoint of an employer. We had in our camps some 800 or 900 employes that were depending upon us to give them employment.

A. I have prepared this statement, which had been handed to the miners officials in a meeting, and it was distri-

2853 buted among the men and also furnished to the Comcerial Club of Kansas City, and to the press.

Mr. Drinker: Was all that, entire booklet that you have in your hand, read to the meeting?

A. No, I read personally to the meeting the statement contained on the bottom of pages one to page ten.

Q. Will you mark that, the parts of it that you read to the meeting? (Witness marks booklet.)

A. As well as this map, which was attached, and which I posted during one of the meetings on the wall of our conference room.

Q. What meeting was it at which you read the statement that you have marked from that booklet?

A. The meeting in February, 1910.

Q. Where?

A. At Kansas City.

Q. And that passage that you marked is a copy of the statement that you read—that is, that is what you read at the meeting? Those words that are marked there?

A. Yes. This statement was prepared by myself and two or three other gentlemen who requested me to read it to the conference which I did.

Q. And you posted—

A. I posted this map and explained it by means of an index hand, to show that the red was the territory we had served prior to our Union relations, and as the result of higher costs our territory had shrunk to the territory shown in blue,
2854 and pointed by arrows to the fields from which the competition came, which drove us back to the limited area of our sales.

Q. Will you read into the records, please, the statement that you read to that meeting?

(Whereupon the statement was read into the record by Mr. Scholz, the same being in the words and figures following, to-wit:) "To the Presidents of District 14, 21 and 25, United Mine Workers of America:

Gentlemen:

The Operators of the Southwestern Interstate Coal Operators' Association hereby offer to the miners in Districts 14, 21 and 25, the 1908 scale for prices of mining, day work, dead work, and substantially the same general terms and conditions of the joint interest agreement, and substantially the same terms as to district conditions, with such modification in the general and district terms and conditions where developments since the making of the 1908 scale show same to be necessary.

We also desire to discuss the question of mining scales for machines where machines are now in use or may hereafter be, and where no scale now exists.

All mines to remain in operation pending settlement.

Yours truly,

SOUTHWESTERN INTERSTATE COAL OPERATORS' ASS'N.

By James Elliott,
Chairman of Scale Committee."

'This, the miners rejected without giving any reasons.

Then the miners presented their demands, as follows:

2855 "First: That all coal be weighed before being screened and paid for on that basis. The mine-run rate in the different districts shall be at least equivalent to the screen coal prices.

Second: That we demand an advance of ten (10) cents per ton for pick mining and an equivalent advance for machine mining and a corresponding increase for all day work, dead work, yardage, etc.

Third: That we demand a uniform rate of wages for all classes of inside and outside day labor.

Fourth: That we demand such a change in the present eight-hour work day so as to provide for eight hours from starting time until quitting time, or what is commonly known as from bank to bank with a half-holiday on Saturday.

Fifth: That the contract period shall be for two years from April 1st, 1910.

Sixth: That all local inequalities and internal differences, both as to prices and conditions, be referred to the districts affected.

Seventh: That all overtime work, Sunday work and work on legal holidays be paid time and a half."

The operators declined these demands without giving their reasons in detail. These follow, and we trust that each miner will take sufficient time to carefully read them:

The Southwestern Interstate Coal Operators' Association, in voting against the miners' proposition, feel that the miners should fully understand the reasons why we cannot
2856 comply with their request.

If it were simply a matter of paying the wages demanded and being able to get it back by raising the prices of fuel to the consumer, the operators might not be so insistent that there should not be an advance, but the facts in the case are that any advance in the cost of mining coal could not be regained through higher prices for fuel. The competitive conditions that generally prevail throughout the entire territory in which the operators of the Southwest are marketing their coal are such that it would be absolutely suicidal, not only to the coal operators, but to the miners as well, to pay the increase demanded.

The coal industry has just passed through a period of eighteen months' depression, and while the rates paid under the 1908 scale are the same as those paid under the 1906 scale, the earnings of the men under the 1908 scale have been materially curtailed by reason of lack of volume of business on account of said depression.

The discovery and development of vast fields of oil and gas affected the price of coal from Omaha to the Gulf of Mexico. It is a fact that fifty-one per cent of the steam in Kansas City is now being generated by oil, and oil is largely displacing coal at Kansas City, St. Joseph, Topeka, Wichita and in the territory embraced within those lines, to say nothing of the situation with oil and gas in Oklahoma and Texas. The domestic coal sales have fallen off fully forty per cent through the use of gas; practically the only coal that is being marketed for that purpose being a little storage coal,
2857 which is kept on hand for use in the event of failure of the gas on account of extreme changes in temperature.

The lack of a market for the Oklahoma oil and the price of same is a menace today to the entire coal situation, there being at this time something in excess of 50,000,000 barrels of oil in storage in Oklahoma. which is sufficient to displace 16,666,000 tons of coal, which is equal to more than the entire annual production of the four states embraced in this movement. A further curtailment in the consumption of coal will follow the completion of pipe lines to carry oil and gas from the various fields to such important markets as Little Rock and Dallas, which lines are now being constructed.

The selling price of coal is necessarily fixed by the selling price of oil and gas, and we will have to deal with each of these fuels separately; consequently we begin with oil.

The oil producers and the Standard Oil Company both guaranteed an evaporation of 14 pounds of water with each pound of oil used as fuel. Each gallon of oil weighs 7½ pounds; each barrel of [il] contains 42 gallons; consequently one barrel of oil weighs 315 pounds. If one pound of oil will evaporate 14 pounds of water, 315 pounds, or one barrel, will evaporate 4,410 pounds of water.

In a test made on Kansas slack coal from Cherokee and Crawford Counties, Kansas, by the Armour Packing Company, they report that one pound of this slack evaporated 6.6 pounds of water; hence 2,000 pounds, or one ton of

Kansas slack coal evaporated 13,200 pounds of
2858 water; so we arrive at the figures by dividing
into the amount of water evaporated by one ton of coal, or about 15,200 pounds, the amount of water evaporated by one barrel of oil, or 4,410 pounds, to get the number of barrels of oil to equal one ton of slack coal, or 2.99 barrels.

Now, the price per barrel of oil must necessarily fix the price of coal, as per the following example:

If oil is worth 50 cents per barrel at Kansas City, the price of coal must be 50 cents times 2.99 barrels, or $1.49½ per ton, less the difference of boiler room expense, which Swift & Co. claim to be 8 cents per barrel on oil, or 40 cents per ton of coal, or 8 cents times 2.99 barrels, or 23.92 cents per ton, as against 40 cents, the cost of firing coal, or 16 cents per ton in favor of oil; so the price of coal would be $1.49½ per ton, less 16 cents or $1.33½ per ton; hence if oil was selling at 50 cents per barrel at Kansas City, coal would have to sell at $1.35½ at Kansas City to equal the price of oil, and the mine price on coal would be arrived at by deducting the freight rate on same, which is 65 cents per ton.

These figures can be arrived at in the same manner with the price of oil and equivalent of coal in various districts. Oil can be purchased today from 35 cents to 57 cents per barrel, depending on the point at which purchased.

Many of the railroads, as stated herein, are now using oil on their locomotives, and we are met, when asking them to discontinue its use on their engines, with the statement that
they are considering the further and greater use of oil,
2859 not only by reason of economy of oil as against coal,
but also because the biennial suspension of mining makes the supply of coal so uncertain, and the storage of it so expensive to them.

The greatest factor in the introduction of oil has been the strikes every two years at contracting periods, encouraging users of fuel to try oil, where they would otherwise never have used it.

Now, as to gas: The same method of figuring applies as with oil. On chemical analysis, we find that there are 966 British Thermal heat units in one cubic foot of gas, and 11,385 British Thermal units in one pound of Kansas coal; hence, in 1,000 cubic feet of gas there are 966,000 British Thermal units, while in 2,000 pounds of coal, there are 22,777 British

Thermal units; consequently by dividing the British Thermal units in 1,000 feet of gas into the British Thermal units in 2,000 pounds of coal, we find it takes 23,500 cubic feet of gas to equal one ton of Kansas coal. There is no cost of firing gas against 40 cents per ton cost of firing coal; consequently the price of gas per 1,000 cubic feet, multiplied by the number of thousand feet required to equal one ton of Kansas coal, less the cost of firing coal, is the price at which coal may be sold in competition, and no higher.

The prices of gas vary from 8 cents to 25 cents per thousand, depending on what purpose it is going to be used, and the time of year which it is used. The steam price of gas varies from 8 cents to 10 cents per thousand. At this point, we may say that the packing houses claim that it takes 17,-
000 cubic feet of natural gas to equal one ton of Kansas
2860 slack coal; but in quoting the foregoing, we are only giving the figures as shown by chemical analysis, which is more conservative than the actual results obtained by practical use.

In addition to the oil and gas competition, we find that the coal produced in New Mexico and Colorado, non-union mines, has come as far east as Oklahoma City, within a short distance of our mines, displacing thereby the product of Oklahoma mines.

In 1906, a definite promise was made to the operators of the Southwest that the Colorado field would be organized. This has not been done, and the Colorado and New Mexico coal has further encroached on our territory since that time. the coal from these two fields is displacing coal produced in District 21 in Ft. Worth and territory west thereof. A vast amount of lignite coal is being mined in Texas by non-union labor, and this coal is being sold to such points as Cleburne and other Central Texas points at a lower delivered price than the freight rate from Arkansas and Oklahoma, which has resulted in the west of a great amount of slack coal, which has been unable to find a market. This is a matter of personal knowledge to every coal miner working in the Arkansas field.

Illinois coal, the mining price of which is not based on competitive conditions with our coal (as in the past our rates have been increased on a percentage basis rather than on a tonnage basis), has been displacing the production of coal in Missouri, Kansas and Arkansas, Illinois coal coming down and taking business at Little Rock, Texarkana and points

south, forcing the Arkansas coal back within a short
2861 distance of the Arkanass mines.

Non-union Alabama coal has displaced the production of coal in District 21, coal from that field being sold at Shreveport and all Northern Louisiana points, and taking all business east of Lake Charles, Louisiana. At the Gulf Coal points, such as Galveston and nearby interior points, we find that a vast amount of Arkansas and Oklahoma production is being displaced by coal mined in the West Virginia non-union fields, shipped by water.

Illinois coal has encroached to such an extent upon Missouri mines that the mines at Huntsville are shut down for the reason that lump coal can be delivered on track at Huntsville, Missouri, from Illinois, at a lower price per ton than run of mine can be produced at that point. One thousand tons per day formerly taken by the Wabash Railroad from Huntsville mines is now being supplied from Illinois.

We also find that non-union Colorado coal is coming east into Kansas, driving the Kansas product closer to its source of production, and taking the business away from all points west of a line drawn north and south through Wichita, and at the present time there is a suit being brought by the Railroad Commission of the State of Kansas before the Interstate Commerce Commission, praying for a lower basis of rates, from Colorado, which will cause the Colorado coal to come further east, displacing thereby a further large amount of Kansas production.

In 1895, the Kansas coal mines supplied the Frisco
2862 Railroad or old Kansas City, Fort Scott & Memphis Railroad Company, with coal as far south as Jonesboro, Arkansas, and today Kansas coal is only carried as far as Springfield, Missouri. We have been definitely told that unless we can make the necessary price, that there will be 240,000 tons per year more Kansas coal displaced in Springfield itself, with Illinois coal.

In the last few years, the railroad companies have been gradually drifting to the use of oil on their locomotives. The Frisco, Rock Island, Kansas City Southern and Santa Fe have today 500 oil burning locomotives in service which heretofore used coal from the Southwestern mines; and, further, on account of the biennial suspension of mining, they are contemplating changing more coal burning engines to oil burners, as they figure with the present price of oil and the present price of coal, that it is cheaper to burn oil than it is

to burn coal, and that they can save considerable money in stocking coal to take care of their needs during our troubles every two years.

We wish to call your particular attention to the conditions that exist in the various fields as to production, as shown by the United States Geological Survey in their report for the year 1908.

There was produced in Missouri in 1903, 4,238,000 tons, and in 1908, 3,317,000 tons, a decrease of 921,000 tons. In Arkansas, in 1903, they produced 2,229,000 tons, and in 1908, 2,078,000 tons, a decrease of 151,000 tons. In Oklahoma, there was produced in 1903, 3,517,000 tons, and in 1908, 2,948,000 tons, a reduction of 569,000 tons. In Kansas, in 1903, there
2863 was produced 5,839,000 tons, and in 1908, 6,245,000 tons, an increase of 406,000 tons, the only state in which an increase is shown.

From competitive states, we wish to call your particular attention to the situation in Illinois, where we claim the mining rate is not on a competitive basis with our own. The production in 1903 was 36,957,000 tons and in 1908, 47,659,000 tons, showing an increase of 10,702,000 tons. In Colorado, in 1903, there was produced 7,433,000 tons, and in 1908, 9,634,000 tons, an increase of 2,211,000.

In New Mexico, in 1903, there was produced 1,541,000 tons, and in 1908, 2,467,000 tons, and increase of 926,000. In Alabama, the production in 1903 was 11,654,000 tons, and in 1907 it was 14,250,000 tons, an increase of 2,596,000 tons. The production of Kentucky, which comes in competition with Arkansas coal on the Mississippi River and west thereof, was for 1903, 7,538,000 tons, and for 1908, 10,246,000 tons, an increase of 2,708,000 tons. In Texas, the production was, in 1905, 926,000 tons, and in 1908, 1,895,000 tons, this increase of 969,000 tons being due to the fact that a great many non-union lignite mines have been developed since 1905. In West Virginia the production in 1903 was 29,000,000 tons, and in 1908, it was 41,000,000 tons, being an increase of 12,000,000 tons.

In other words, the production in nearly all of the states which are competitive with us has increased as against a falling off in all of our territory, with the exception of the state of Kansas. This small increase is more than offset
2864 by the decrease in other states so that in the four states embraced by this movement, there was a net decrease of 1,235,000 tons. The total production of coal in the United

States in 1903 was 357,000,000 tons, and in 1908, 415,000,000 tons, a total increase of 58,000,000 tons, while during the same period we have made a decrease which is the only decrease shown in any district in the United States.

At this point we desire to call your attention to the following figures quoted from the report of the United States Geological Survey, to the effect that the districts embraced in the four states produced in 1903. 15,824,000 tons, and in 1908, 14,588,000 tons, a decrease of 1,236,000 tons. We also desire to call your attention to the fact that during the year 1898, the same states produced 8,680,000 tons, as against a production of 15,824,000 tons in 1903, being an increase of 7,144,000 tons.

In other words, the percentage of increase under non-union conditions existing between 1898 and 1903 was 83.33 per cent, and during the five years under the agreement, the tonnage not only failed to hold its own, but has fallen off, as shown, 1,236,000 tons, or 8.4 per cent.

In addition to the foregoing figures, the non-union competitive fields produced in 1898. 32,192,000 tons, in 1903, 54,493,000 tons, an increase of 22,201,000 tons, or 70 per cent. In the Southwest, 1898, we produced 8,680,000 tons, in 1903, 15,824,400 tons, an increase of 7,140,000 tons or 83-1/3 per cent, which percentage was considerably greater than
2865 that shown in the present non-union competitive fields.

In 1903, as quoted, the non-union competitive fields produced 54,493,000 tons. In 1907, 86,513,000 tons, an increase of 43,020,000 tons, or 59 per cent over 1903. In the Southwest, as quoted, we produced in 1903, 15,824,000 tons, in 1907, 17,633,000 tons, an increase of 2,209,000 tons, or 12 per cent. In other words, our percentage of increase in the four years has been materially less than the non-union competitive fields, as they have increased 59 per cent., and our field only 12 per cent.

Again, in 1908, the production of non-union competitive fields was 75,839,000 tons, an increase over 1903 of 20,896,000 tons, or 59 per cent, while in the Southwest in 1908, the production was 14,588,000 tons, a decrease over 1903 of 1,236,000 tons, or 8.4 per cent. By this, it will be seen that the year of 1908 the non-union competitive fields showed a gain of 20,896,000 tons, or 39 per cent. over 1903, while we made a loss of 1,236,000 tons, or 8.4 per cent, or 47.4 per cent. of what we ought to have done as compared with the non-union competitive fields.

This is due entirely to the fact that the scale in 1903 was made without due consideration to competitive conditions in other fields, and the percentage of increased cost has been so great that it has put the operators in a position where they cannot take business, and the result has been loss of work and less tons produced.

Take the situation at Alderson. The cost of coal at Alderson was $1.13 in 1898. prior to the agreement with
2866 the United Mine Workers. and today the cost of $2.70 per ton. At Bonanza, the [sot] in 1898 was 96 cents per ton, and today it is $1.75 per ton.

During the non-union period from 1898 to 1903, many thousand tons of coal were shipped from Oklahoma into the Republic of Mexico, and even as far south as the City of Mexico, while, under present conditions, for several years past, not a single pound of coal has been shipped to that territory.

In the non-union period prior to 1903, we shipped a large tonnage to Houston, Galveston and Port Arthur for export and steamer use, and the entire State of Texas drew its entire supply of fuel, with the exception of one mine in Texas, from Oklahoma and Arkansas. Today, under union conditions, we are excluded from the south half of Texas, which is supplied entirely by coal from the non-union fields of Alabama and West Virginia, while the western part of Texas, which we also have lost, is supplied almost exclusively by coal from non-union mines in New Mexico and Colorado.

Between 1898 and 1903, under non-union conditions, the entire State of Oklahoma, then Indian Territory, was supplied by mines located in Indian Territory. Today, under the union the western half of Oklahoma, even as far east as Oklahoma City, is now very extensively supplied with non-union coal from Colorado.

Before we agreed with the Union, the entire State of Louisiana, except that portion east of the Mississippi River, was supplied with coal from Arkansas. Now, that territory is supplied with coal from Southern Illinois and from the non-union mines of Alabama.

2867 Prior to our agreement with the United Mine Workers of America, the entire State of Arkansas, and all the railroads in it, were supplied with coal from Arkansas mines. Now, practically no union coal from Arkansas mines is used [—] of Little Rock.

The Iron Mountain, Cotton Belt, and practically all other railroads and users of steam coal in the eastern half of Arkansas, are using Illinois and non-union Alabama coal.

We know that a further increase in the cost of mining in our territory means such a falling off in our tonnage, that in effect it would mean the destruction of the value of our properties, and even with the fourteen per cent increase in wages would result in a marked reduction in the revenue of the men at the end of the year. Our scale at the present time is higher than the scales of the surrounding competitive fields, and on account of this, and the competition of oil and gas, we are forced to decline your demand, and we have offered you the very best we can."

Mr. Drinker: By whom was that statement prepared?

A. By a committee of three, of which I was a member, but I do not recall who the other members were at this time. The principal work was done by myself.

Q. And in what capacity did you three prepare that statement?

A. As a committee selected by the Southwestern Inter-State Coal Operators' Association, to present our case to the conference.

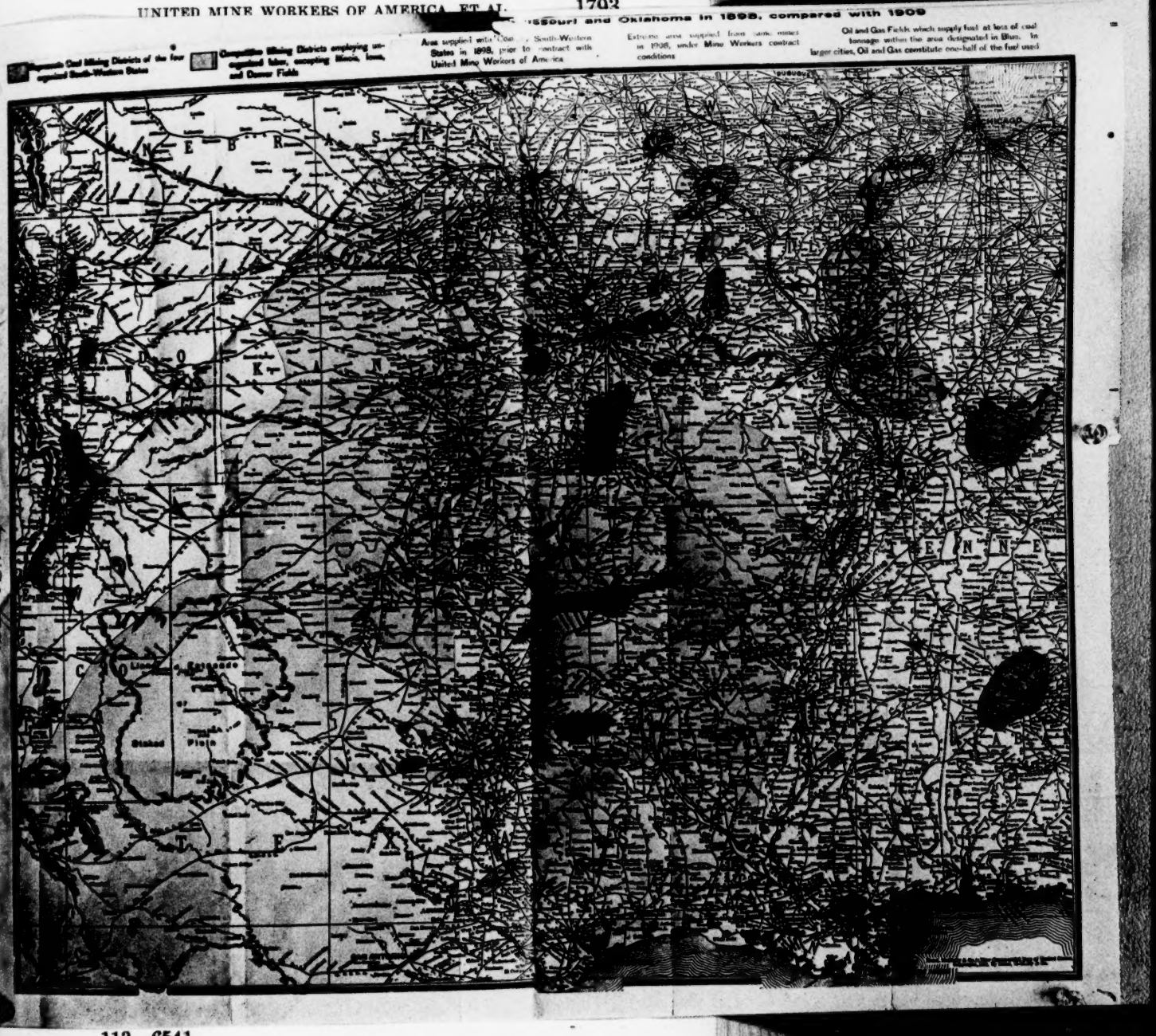
Q. And the statement was read as the statement of the Association? A. It was.

2868 Q. Will you please identify the map to which you have referred? I offer this map in evidence.

Mr. Warrum: Objected to for the same reasons.

A. I will.

The map referred to is herewith filed as a part hereof, marked for identification: "Pltffs. Ex. Map."


[redacted] Missouri and Oklahoma in 1898, compared with 1909
Competitive Mining Districts employing unorganized labor, excepting Illinois, Iowa, and Denver Fields
Area supplied with Coal from South-Western States in 1898, prior to contract with United Mine Workers of America
Extreme area supplied from same mines in 1908, under Mine Workers contract conditions
Oil and Gas Fields which supply fuel at less of coal tonnage within the area designated in Blue. In larger cities, Oil and Gas constitute one-half of the fuel used
NEBRASKA
KANSAS
TENNESSEE
CHICAGO

2869 Q. Do you know of any investigation that Stewart, Holt, and the other leaders whom you have named, made of competitive conditions between the non-union fields you have named and the District 21 operators, governing and affecting their operations, between the years named, which would enable them to acquire information of this kind in addition to that they obtained from the discussions at these meetings?

A. Yes, Stewart stated at one of the meetings that he had been out in Colorado and investigated conditions existing out there, because we had been promised in the meeting of 1904, when we first formed our organization—when we first made our wage agreement—that the districts of Colorado and New Mexico would be organized. Stewart promised us his efforts toward such organization, and made several trips to Colorado. I think I recall one trip when he was beaten up by some of the men out in Colorado, which makes me state I knew he went out there for some purpose or another.

Q. In connection with this promise that you say was made to organize Colorado and New Mexico, was that made in pursuance of any demand or request by the operators?

2870 A. It was made in response to our statement that we could not make these increases in wages without closing our mines down, so the statement was made in open meeting that the States that we protested against bringing coal into our territory would be organized and put on a basis equal to that demanded of us.

Q. In this statement that you read you mention the fact that you Arkansas and Indian Territory operators were very much hampered by the open shop competition of Colorado, New Mexico, the Texas lignite mines, Alabama and Kentucky. If that was so, how was it that you had managed to survive until 1914, and how was it that they did not put you out of business?

A. Railroad freight rates were the only thing that enabled us to survive in the territory which had been greatly contracted as the result of higher cost of coal. It would not be feasible for coal from Colorado to come any closer to the mines than they did because of the freight rate.

Q. Just explain that a little more in detail, if you will.

A. Freight rates are usually based to cover certain zones surrounding the mines. Between these two zones is what we might call a "No-Man's Land", which is competitive to the two invading districts. The railroads would not permit coal from Colorado to be shipped to McAlester, because the cost of transportation would be prohibitive to do so; there-

fore we were able to supply a limited territory immediately surrounding our mines, which the other mines could not reach. That was the only thing we had left. In our statements I recall I presented the shrinkage in tonnage which we
2871 sustained. Our position had been that under the experience of the coal business during the preceding thirty or forty years, every coal field should increase at the rate of ten per cent for each year over the previous year; in other words, in a ten years' period the production of the field should double. That has been the history of the coal industry of the United States. Our territory shrunk instead of expanding. We not only did not hold our own, but we actually lost tonnage on account of the high production cost.

Q. In what way would the presence of the open shop mine affect the business of the closed shop mine competitive with it? A. By lower cost of production.

Q. And how would that affect the closed shop mine? I want you to analyze the different steps by which this thing would come about."

Mr. Warrum: We object to that for the reasons heretofore given to similar class of testimony. It calls for a conjecture on the part of the witness.

The Court: Objection overruled.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Q. What is the first thing that would happen when the open shop mine got going in competition with the closed shop mines, shipping to the markets under the same freight rates?

A. The closed shop mine could not possibly sell coal in competition with an open shop mine, under same freight rates, to the same territory, by reason of the difference in cost of production; therefore, the closed shop mine could not resume operation.

Q. How would the success of the open shop affect its
2872 cost of production?

A. By reduced cost of production, which would be further augmented by the increased tonnage, which would be followed by still greater reduction in the production cost.

Q. Where would the increased tonnage come from?

A. From the same open shop mines

Q. At whose expense? At whose expense would the increased tonnage of the open shop mine be produced?

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

A. At the expense of the closed shop mines, which would then not be operating at all, or under very much restricted production.

Q. Would the decreased tonnage of the closed shop taken from them by the open shop mines, increase or decrease the cost of production of the closed shop mines?

A. It would increase the cost.

Q. You have stated, then, that the effect of the starting of this open shop mine in the Union district, would take the tonnage from the union competitors, and what would be the necessary action on their part--the Union people?

Mr. Warrum: That is objected to as calling for a conclusion.

The Court: Objection overruled.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

A. They would either have to go on the open shop
2873 basis or shut down.

Mr. Drinker: Q. If they went on the open shop, what would then be the result as to the other Union operators and their neighbors on the other side?

Mr. Warrum: Same objection"

Mr. Warrum: The defendants make the same objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

"A. They would have to follow suit

Mr. Drinker: What would then result as to the Union operators in District 21?

Mr. Warrum: Same objection.

Mr. Drinker: As to the other Union operators in District 21.

Mr. Warrum: Same objection.

A. There would not be any left. They couldn't possibly live under the agreement.

Mr. Drinker: Did they or did they not?

A. They did."

Mr. Warrum: We object to that, it is immaterial and a conclusion on his part.

Mr. Drinker: We will withdraw the question.

"Q. I asked you whether you gave them to understand. I don't want to know what was in your mind; I want the substance of what you told them in relation to it.

A. We were very unwilling, and entered into it under protest.

Mr. Drinker: How many? Many or few?

A. Practically all. There were [to] possible exceptions.

2874 Q. How many operators were there in District 21, about? A. About fifty.

Q. Where were these statements made to the District officers, in private meetings or in the big meetings?

A. Both.

Mr. Drinker: Why was it that you continued these relations with them?

Mr. Warrum: Defendants severally object to this question because it calls for speculation on the part of the witness.

A. We were unable to keep men in the field. The miners' organization transported our men into adjoining territories, and depopulated our camps. They intimidated such men as remained, and made matters generally disagreeable, so that as the result we were finally forced into the first agreement, and renewed our objections at every meeting thereafter.

Mr. Drinker: What, if anything, was necessary to give you the courage to start open shop?

Mr. Warrum: Defendants severally object to this question, for the reason that it calls for an opinion, conclusion and speculation on the part of the witness

A. The matter of starting on open shop was often discussed, and if one man would start it I am sure others would have followed.

Mr. Drinker: If he had started?

A. If he had succeeded.

Q. What do you mean by succeeded?

A. By running without interference on the part of the miners' organization.

2875 Q. Now, in August, 1910, after the mines in District 21 had been on strike since April 1st, demanding a wage increase, do you remember what, if any, action Mr. Bates took on behalf of his mine?

A. I believe Bates started on open shop basis.

Q. When?

A. About that time in August, but later on—

Q. How long did he continue?

A. Not very long. I was in Kansas City at the time, and we got rumors that Bates had started to work open shop with a small number of men, but how long he operated I do not recall at this moment.

Q. That is not what I am interested in. After that, what, if any, action did he take?

A. He signed an individual contract.

Q. Did he grant the wage increase demanded?

A. Yes, he did, with the proviso that whatever adjustment would be made with the general operators—

A. I read that contract, because Stewart brought it to me at the Balmore Hotel.

Q. Did Bates sign a separate contract for his men with the Mine Workers? A. He did.

Q. What did the other operators do following that?

A. They signed the same contract.

Q. Were you one of them? A. I was.

2876 Q. Did Bates signing the contract have any influence on the other operators in signing their contracts?

A. Yes, it broke the strike, so to speak it caused others to do the same thing.

Q. Why was that?

A. Because the other mines did not want one mine to operate and have their mines closed down.

Q. Explain that a little more in detail.

A. Bates had made a contract on the basis which the Mine Workers had asked and which we had denied. Stewart came to my room at the Balmore Hotel and showed me the copy of the contract, together with Mr. James Elliott, who was the President of the Southwest Operators' Association, and when we found Bates was going to start his mines we felt it necessary to resume likewise, because if he would have resumed and we would have been idle he would have gotten a great number of men from the mines that had been closed down, and we would not have been able to operate.

Q. How about your markets?

A. He would have taken our markets, of course.

Q. You say he would have taken what?

A. I say he would have taken our markets, of course.

Cross-Examination

By Mr. Warrum:

Q. Now, where did you live, where was your residence and home, during this period from 1910 to 1915?

A. I lived in Chicago.

2877 Q. And what was your position?

A. I was President of the Rock Island Coal Mining Company, and manager of the Mining Department of the C. R. I. & P. Railway.

Q. That is Chicago—

A. Rock Island & Pacific Railroad.

Q. They had a coal company that the railroad operated, and you were the manager, is that right?

A. That is right.

Q. And you were also the manager of the coal buying department for the Railroad Company?

A. Not at that period. I bought the coal for the C. O. & G. Railroad in the year 1902 and 1903, then that office was relinquished to the fuel agent and I only bought the coal for the Rock Island Railroad in 1916 and 1917.

Q. That is the railroad system that has been succeeded by the Rock Island?

A. Yes, sir.

Q. And you are still with the Rock Island?

A. No, I am not.

Q. You are living now at Charleston, West Virginia?

A. Yes, sir.

Q. And you are operating coal properties in Southern West Virginia?

A. In Raleigh and Wyoming Counties.

Q. For yourself or for a company that you have organized? A. For a company.

Q. You are now operating non-union?

A. Yes.

2878 Q. Now, in these large meetings, as they have been termed by Mr. Drinker, or joint conferences between the miners and operators in the Southwestern District, you would meet for the purpose of negotiating wage scale, is that correct? A. Yes.

Q. That would be a collective bargain or contract between the operators and miners, which contained a wage scale and the conditions relating to their labor, is that right?

A. Right.

Q. And those meetings would last different periods, a week, two weeks, a month, or longer, sometimes be adjourned. Did you ever fail to agree on a wage scale?

A. Yes.
Q. Then nothing would be done?
A. Nothing would be done.
Q. When the scale was agreed on, or contract and agreement made between the miners' representatives and the operators, would that be reduced to written contract form?
A. Yes.
Q. Usually printed, was it not?
A. Yes, printed booklets.
Q. And that contained all the agreements between the miners and operators, is that true?
A. Yes.
Q. Was there any secret or clandestine agreement between the miners and operators as to their conduct, or was it all contained in the agreement between the miners and opera-
2879 tors?
A. The agreement contained everything that was agreed upon.
Q. And that was signed and usually printed?
A. Yes.
Q. Now, in these joint conferences the proceedings were usually opened by a wage scale demand on the part of the miners, were they not? A. Yes.
Q. And that became the subject, then, of debate and discussion between the miners and operators?
A. Exactly.
Q. That debate would cover quite a period of time?
A. Yes.
Q. Nearly all the operators and nearly all the miners took part in it, did they not?
A. Yes.
Q. Everybody had their little speech or argument?
A. Yes.
Q. The burden of the operators' argument was that they couldn't afford to pay the wage scale demanded, on account of the various conditions, industrial conditions, the markets, the pressure of competition from other fields, and matters of that kind, is that not true?
A. That is right.
Q. And the miners would undertake to meet that, and insist that the scale they demanded was a proper scale, reasonable scale, and that they wanted it and would have it, is that right? A. That is right.
2880 Q. Now, it was in pursuance of this debate and discussion that you read to the conference at Kansas City

that met in February, 1910, the statement that you have read in this deposition in answer to Mr. Drinker's question?

A. Yes.

Q. That statement was made in the course of these debates, and you are attempting by that statement to show in a logical way, and by the different arguments that you could muster, and the map that you had prepared, that you could not afford to pay the wage scale demanded by the miners, is that correct?

A. It is. Our objection was based very largely on the fact that the miners tried to increase our cost on a percentage basis.

Q. Yes, but it was the wage scale—

Mr. Drinker: Let him answer.

Mr. Warrum: All right.

A. The cost in Illinois, and the mining rates in Illinois, or, if you please, the four competitive states, were very much lower than our costs were in the Southwest, which was partly due to the initial high rate due to the thinner seams. Now, when Illinois increased its mining rate 5.5 per cent, 5.55 it meant a good deal more to us to increase it at the same rate than to the four competitive states, and we insisted on the flat increase rather than on a percentage increase. That was one of the main bones of contention we had. Furthermore, that the miners had not made good their promises in bringing the rates of our competitors to the same basis that we were initially on.

Q. Now, are you ready for me to ask a question?

2881 A. Yes, sir.

Q. All right. Now, among other fields that you complained of, in which you argued in this statement that the wage scale was so much lower that it interfered with the production that your mines might have under the wage scale demanded by the miners in 1910, was the State of Illinois, was it not? A. Yes.

Q. And that the mines there are operated on a Union basis, are they not? A. Yes.

Q. And the scale there was a Union scale, was it not?

A. Yes.

Q. And you were complaining of competition from a State that had a union scale, as well as states that had a non-union scale, were you not?

A. The competition from Illinois was not nearly so great, as you will see by examining the map that the margin of recess was much smaller here than it was in our natural markets.

Q. But you did make as an argument why you couldn't grant the wage scale demanded by the miners in 1910, that there was competition from the State of Illinois, where you claimed that the mining rate was not on competitive basis with your own?

A. That is right; it was not competitive.

Q. And you objected to paying the wage scale demanded by them, not only on account of conditions in non-union fields, but on account of wage conditions in union fields, is that not true?

A. Only as applies to the Southern District of Illinois.

2882 Q. You further stated this, did you not, in that statement, by way of an argument against the wage demand of the miners: I will quote: "The discovery and development of vast fields of oil and gas has affected the price of coal from Omaha to the Gulf of Mexico. It is a fact that fifty-one per cent of the steam in Kansas City is now being generated by oil, and oil is largely displacing coal at Kansas City, St. Joseph, Topeka, Wichita and in the territory embraced within those lines, to say nothing of the situation with oil and gas in Oklahoma and Texas. The domestic coal sales have fallen off fully forty per cent. through the use of gas." That is true, is it not? A. It is.

Q. You have also made this argument to them as against the wage scale demand that they present: "The lack of a market for the Oklahoma oil and the price of same is a menace today to the entire coal situation." Is that true?

A. As applied to District 21, it was and is.

Q. And you also stated this: "The selling price of coal is necessarily fixed by the selling price of oil and gas." Is that right? A. That is right.

Q. Now, in other words, this meeting, insofar as you by this statement contributed to it, was nothing but an attempt to argue the miners away from their then demand for a wage scale, was it not, and that in that argument and discussion you used any and all reasons and arguments that you thought might properly be considered, or that might properly

2883 bear upon the question of a wage scale?

A. We stated everything we could think of which would affect the operation of the mines and by so doing diminish the earning power of our men.

Q. And in response to your argument the miners would present any and all arguments they could think of that would justify their present demand for a wage scale, is that right?

A. They marshaled all their forces they could against us.

Q. Then after these discussions, debates and arguments were had, the contract was finally agreed upon?
A. Yes, sir.
Q. And that was reduced to writing, signed, and generally printed? A. Yes.
Q. And this contract that was made in Kansas City in 1910 expired in 1912, and the new contract was made after that, was it not? A. It was.

(Witness excused)".

Mr. Drinker: We wish to have identified these reports.

(The reports referred to were marked by the reporter Exhibits 37 to 41, both inclusive.)

Mr. Drinker: From the Fifth Semi-Annual Report of Fred W. Holt, being Exhibit 37, covering the period from April 1st, 1914, to September 30th, 1914, inclusive, page 6, as follows:

Expense of Prairie Creek Strike.

Webb Covington, Attorney Fee	$3,137.63
Ben Cravens, Attorney Fee	1,120.75
Bob McFarlane, Attorney Fee	995.25

2884

Court Costs in Injunction Cases.

Expense of Witnesses, etc.	$6.696.01
Merchandise, Tents and Supplies for Strikers and their families	7,637.78
P. C. Hendricks, Stenographer, Transcribing Evidence in Injunction Cases	220.45
Wm. Wellshear, Transcribing Evidence in injunction Cases	50.00
Thos. M. King, Dist. Organizer, Salary	612.30"

Mr. Warrum: The defendants object to this as it has no possible bearing on this case whether or not a stenographer was employed and an attorney paid.

The Court: It perhaps shows that the district was managing this strike, but why read it all.

Mr. Drinker: It is important to show how much money these people spent on this.

The Court: I don't think that is important, it is important to show that the district financed it.

Mr. Drinker: There has been testimony that the money was not all spent like it says here.

The Court: I am not responsible for that.

Mr. Drinker: But I want to check this up with the testimony.

"R. R. and Other Expenses	$ 678.62
National Organizer	810.26
K. C. Adams, Publicity Agent	454.63
K. C. Adams, Special Account	25.24"

2885 Now, on page 16.

"Returned by National Organizers sent to Colorado	$722.00
By donation to Prairie Creek strike:	
L. U. 2535, Strawn, Texas	150.00
L. U. 894, Lyra, Texas	100.00"

The Court: I suppose "L. U." means local union?

Mr. Drinker: Yes, sir. Now, the officers report on pages 21 to 23, showing Stewart reported for April, May, June and July. Now, going on with the reading, and the figures and the amounts that are paid need not go in; don't copy in the railroad, hotel, telegraph, and so forth, just the part showing where he went and to where:

"From McAlester to Ft. Smith, carried over from March.

Ft. Smith to St. Louis.
St. Louis to Kansas City.
Kansas City to Ft. Smith.
Ft. Smith to Kansas City.

(Last half April)

Kansas City to Ft. Smith.
Ft. Smith to Wagoner and McAlester.
McAlester to Ft. Smith.

(First Half May).

Ft. Smith to Midland, Hartford.
Hartford to Ft. Smith.
Ft. Smith, auto, to Hartford.
Hartford to Coalgate.
2886 Coalgate, rig, to Atoka.
Atoka to Kansas City.
Kansas City to Ft. Worth.

(Last Half May.)

Ft. Worth to Ft. Smith.
Ft. Smith to Midland, Ret.
Ft. Smith to Hartford, auto.
Ft. Smith to Hartford.
Hartford to Prairie Creek.
Hartford to Ft. Smith, Ft. Worth.
Ft. Worth to Tulsa.

(First Half June)

Tulsa.
Tulsa, rig.
Tulsa, to Henryetta.
Henryetta to Muskogee.
Muskogee to Ft. Smith.
Ft. Smith to Clarksville, cab.
Clarksville to Ft. Smith.
Ft. Smith to Hartford, rig.
Hartford to McAlester.
McAlester to Kansas City.
10, 11, 12, Board, Kansas City.
Kansas City to Ft. Smith.

(Last Half June)

Ft. Smith to Kansas City.
Kansas City to McAlester.
2887 McAlester to Howe to Ft. Smith.

(First Half July)

Ft. Smith to McAlester.
McAlester to Ft. Smith,
Ft. Smith to Ft. Worth.

(Last Half July)

Ft. Worth to Ft. Smith.
Ft. Smith to Kansas City.
Kansas City to Henryetta."

Mr. Drinker: Now, Exhibit 38, being the Sixth Semi-Annual Report of T. B. Douglas, Secretary-Treasurer, District No. 21, from October 1st, 1914 to March 31st, 1915, inclusive.

I want to read just one line, but I want to read these donations from these local unions all over the country.

Mr. Warrum: Now, there is a curious proposal by counsel for plaintiffs. He wants to read statements that locals scat-

tered around over the country had donated to this strike. What difference could that make? Would it bind the National or the District anymore?

The Court: I suppose they are locals in this district?

Mr. Drinker: No, locals of the national organization, and the National Constitution contains the provision that no local shall make donations except to a properly authorized strike. It shows this was not a local thing, but that all of the locals over the country were making donations.

Mr. Warrum: I want to make a formal objection to that statement at this time, the portion that is now offered,
2888 as it does not show that the International was responsible nor the district.

The Court: Objection overruled.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Mr. Drinker: Now, pages 3, 4, 5 and 6, showing the donations of the locals to legal battle in defense of Prairie Creek strike.

	"Benier, Mo., U. M. W. of A.	$ 50.00
	Birmingham, Ala.	10.00
	Roundup, Mont.	25.00
	Washe, Mont.	5.00
	Swanwick, Mo.	5.00
	Bridgeport, Tex.	50.00
	Higbee, Mo.	10.00
	Cle Elum, Wash.	10.00
	Pittsburgh, Kansas, Powder Workers	5.00
	Richmond, Mo.	10.00
	Connellsville, Mo.	25.00
	Mulberry, Kansas.	5.00
	Stone City, Kansas.	5.00
	Pittsburg, Kansas.	20.00
	Columbus, Kansas.	5.00
	Weir, Kansas.	10.00
	Pittsburg, Kansas.	10.00
	Wilkinson, Wash.	25.00
	Sand Conlee, Mont.	25.00
2889	Windsor, Mo.	$ 5.00
	Marceline, Mo.	15.00
	Dist. No. 9, Jas. McAndrews Secretary.	500.00
	Mineral, Kans.	15.00

	Pittsburg, Kansas.	20.00
	Higbee, Mo.	25.00
	Scammon, Kansas	10.00
	Trenton, Mo.	5.00
	Pittsburg, Kansas.	5.00
	Mondemines, Mo.	5.00
	Panama, Mo.	5.00
	West Mineral, Kansas.	5.00
	Thurber, Texas.	50.00
	Lyra, Texas.	50.00
	Oklahoma State Federation of Labor	50.00
	Ft. Smith, Ark.	1.00
	Pittsburg, Kansas.	10.00
	Ronald, Wash.	75.00
	Osage, Kansas.	10.00
	Ronald, Washington.	5.00
	Little Rock, Arkansas.	25.00
	Keoto, Missouri.	30.00
	Jenny Lind	25.00
	Ravendale, Wash.	50.00
	Little Rock, Ark.	5.00
2890	Newcastle, Texas.	$5.00
	Ft. Smith, Ark.	5.00
	Argenta, Ark.	150.00
	Tona, Wash.	5.00
	Burnett, Wash.	50.00
	Lehigh, Okla.	100.00
	Okmulgee, Ok.	1.00
	C. J. McAlester, Okla.	5.00
	Palmer, Wash.	2.50
	Houston, Tex.	1.00
	Chas. H. Crone	25.00
	Oklahoma City	5.00
	El Paso, Texas.	5.00
	Dallas, Texas.	2.00
	Shenandoah, Pa.	10.00
	Ennis, Texas	1.00
	Port Arthur Trades & Labor Council	5.00
	Oklahoma City.	5.00
	Houston, Texas.	2.00
	Ranshaw, Pa.	10.00
	Shenandoah, Pa.	10.00
	Int. Alliance Theatrical Stage Employees	1.95

	Arma, Kansas.	57.50
	Shamokin, U. M. W. of A.	5.00
2891	Donations to Prairie Creek Strike	
	Okla. City Trades Council	$ 25.00
	El Paso, Texas.	5.00
	Pawhuska, Okla.	2.00
	Pawhuska, Okla.	10.00
	Shawnee, Okla.	2.00
	Spadra, Ark.	5.00
	Savanna, Okla.	10.00
	Alix, Ark.	35.00
	Lyra, Tex.	25.00
	Dow, Okla.	5.00
	Coalgate, Okla.	50.00
	Chickasha, Okla.	3.00
	Okla. City	2.00
	Lutie, Okla.	25.00
	Okla. City.	5.00
	Okla. City	25.00
	Shawnee, Okla.	5.00
	Dallas, Texas	2.00
	Savanna, Okla.	35.00
	Lyra, Tex.	26.60
	Lehigh, Okla.	7.75
	San Antonio, Tex.	5.00
	Ft. Smith, Ark.	15.00
	Paris, Ark.	5.00
	Henryetta, Okla.	81.00
2892	Trevorton, Pa.	10.00
	Heavener, Okla.	2.00
	Ft. Smith, Ark.	97.00
	Henryetta, Okla.	12.00
	Dewar, Okla.	47.85
	Pittsburgh, Okla.	5.00
	Ft. Smith, A. Atkinson,	2.00
	Lost Creek, Pa.	25.00
	Bryant, Okla.	78.00
	Ft. Smith	2.50
	Greenwood, Ark.	10.00
	Denison, Tex.	1.00
	Texas City, Texas	10.00
	Van Couver, La.	3.00
	Port Arthur, Tex.	5.00
	Argenta, Ark.	50.00
	Galveston, Tex.	10.00
	Beaumont, Tex.	2.00
	Bokoshe, Okla.	8.00"

Mr. Grant: I would like to ask Mr. Drinker if that is a local union of the Mine Workers at Little Rock.

Mr. Drinker: No, the A. R. T., and I will leave that one out.

Mr. Warrum: They are all voluntary contributions, as shown by the one made by the men at Little Rock.

The Court: Let it go in.

To which action and ruling of the court the defendants
2893 and each of them at the time duly excepted and still except.

Mr. Drinker: Then, on page No. 8, the defense fund. The whole Defense Fund is marked but I will read this one item.

"Legal Services, Court Costs, Witnesses, expenses and supplies for Strikers in Hartford Valley $12,205.74
Webb Covington, attorney 2,068.46
Hartford Valley, expense, court costs, of filing papers for appeal in Contempt cases 715.00
Guy Williamson and P. C. Hendricks for Transcribing evidence and court cost in Contempt cases 419.15
F. W. Holt, services in Injunction cases 74.78
R. W. McFarlane, attorney fee 672,35
Committee Work at Hartford 1,146.10"

Mr. Warrum: Now, on the same pages we can show what they spent themselves, and what the receivers spent in the last trial.

The Court: I suppose that this expense that they have read here is an expense to the district, and that may be competent.

Mr. Warrum: If a man is sued, what can he do except to go into court and pay the expense; he is sued.

The Court: Sure.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Mr. Drinker: None of it is in connection with this suit, it is for the strikers.

The Court: I have allowed it to go in.

Mr. Drinker: That is all on that.

2894 From Exhibit 40, being the Semi-Annual Report of the Secretary-Treasurer, from October 1st, 1915 to March

	Arma, Kansas.	57.50
	Shamokin, U. M. W. of A.	5.00
2891	Donations to Prairie Creek Strike	
	Okla. City Trades Council	$ 25.00
	El Paso, Texas.	5.00
	Pawhuska, Okla.	2.00
	Pawhuska, Okla.	10.00
	Shawnee, Okla.	2.00
	Spadra, Ark.	5.00
	Savanna, Okla.	10.00
	Alix, Ark.	35.00
	Lyra, Tex.	25.00
	Dow, Okla.	5.00
	Coalgate, Okla.	50.00
	Chickasha, Okla.	3.00
	Okla. City	2.00
	Lutie, Okla.	25.00
	Okla. City.	5.00
	Okla. City	25.00
	Shawnee, Okla.	5.00
	Dallas, Texas	2.00
	Savanna, Okla.	35.00
	Lyra, Tex.	26.60
	Lehigh, Okla.	7.75
	San Antonio, Tex.	5.00
	Ft. Smith, Ark.	15.00
	Paris, Ark.	5.00
	Henryetta, Okla.	81.00
2892	Trevorton, Pa.	10.00
	Heavener, Okla.	2.00
	Ft. Smith, Ark.	97.00
	Henryetta, Okla.	12.00
	Dewar, Okla.	47.85
	Pittsburgh, Okla.	5.00
	Ft. Smith, A. Atkinson,	2.00
	Lost Creek, Pa.	25.00
	Bryant, Okla.	78.00
	Ft. Smith	2.50
	Greenwood, Ark.	10.00
	Denison, Tex.	1.00
	Texas City, Texas	10.00
	Van Couver, La.	3.00
	Port Arthur, Tex.	5.00
	Argenta, Ark.	50.00
	Galveston, Tex.	10.00
	Beaumont, Tex.	2.00
	Bokoshe, Okla.	8.00"

Mr. Grant: I would like to ask Mr. Drinker if that is a local union of the Mine Workers at Little Rock.

Mr. Drinker: No, the A. R. T., and I will leave that one out.

Mr. Warrum: They are all voluntary contributions, as shown by the one made by the men at Little Rock.

The Court: Let it go in.

2893 To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Mr. Drinker: Then, on page No. 8, the defense fund. The whole Defense Fund is marked but I will read this one item.

"Legal Services, Court Costs, Witnesses, expenses and supplies for Strikers in Hartford Valley $12,205.74
Webb Covington, attorney 2,068.46
Hartford Valley, expense, court costs, of filing papers for appeal in Contempt cases 715.00
Guy Williamson and P. C. Hendricks for Transcribing evidence and court cost in Contempt cases 419.15
F. W. Holt, services in Injunction cases 74.78
R. W. McFarlane, attorney fee 672,35
Committee Work at Hartford 1,146.10"

Mr. Warrum: Now, on the same pages we can show what they spent themselves, and what the receivers spent in the last trial.

The Court: I suppose that this expense that they have read here is an expense to the district, and that may be competent.

Mr. Warrum: If a man is sued, what can he do except to go into court and pay the expense; he is sued.

The Court: Sure.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Mr. Drinker: None of it is in connection with this suit, it is for the strikers.

The Court: I have allowed it to go in.

Mr. Drinker: That is all on that.

2894 From Exhibit 40, being the Semi-Annual Report of the Secretary-Treasurer, from October 1st, 1915 to March

31st, 1916, page 6, showing a payment to Jno. Manick as a member of the conference committee, and on pages 8 and 9, under "Defense Fund", showing payments,—

Mr. Warrum: Now, this is a peculiar way, and I object to counsel reading in this fashion from a book which he does not identify and he does not say who pays it and no one knows, and for the further reason that it is incompetent, and does not sustain any issue in this case.

The Court: I don't know.

Mr. Drinker: They are just the things that we had in the old record that I want to get in this record.

The Court: It may have been proper then, and highly improper here. What are you reading from?

Mr. Drinker: From Exhibit 40, the Eighth Semi-Annual Report of the Secretary-Treasurer of District 21, page 8 and 9.

The Court: Overruled.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Mr. Drinker: (Reading)

"P. R. Stewart, services on pardon cases, Jas. McNamara $174.70
Klinger's Cafe, meals for men in jail, Prairie Creek trouble 18.50
Jim Slankard, Clint Burris, hotel bills 3.25"

And I also offer under the heading "Old Age Pension" 2895 the following:

"James Crossley $78.00",

and the preceding pension list to show that he was not on the pension list at that time.

Mr. Warrum: What does that prove, that he was not of the proper age at that time?

Mr. Drinker: No, that he was put on just as soon as he came out of jail.

The Court: It might be his age.

Mr. Drinker: I next offer from the Ninth Semi-Annual Report of the Secretary-Treasurer of District 21, being Exhibit 41, under the heading "Old Age Pension".

"James Crossley, Midland, Ark. $105.00"

Mr. Grant: That was payment made by District 21?

Mr. Drinker: Yes, sir. Now, from the minutes of the International Excutive Board, being Exhibit 49 of the old record, the following under date of July 21, 1914, beginning when the meeting was called to order by the president, and that portion which shows that James Mullen was present at that meeting.

The Court: What will you have next.

Mr. Drinker: From the proceedings of District 21 Convention, produced by the defendants, held on September 21, 1915, at Knights of Pythias Hall, McAlester, pages 84 to 87, just to show present Joe York, Oscar Layton, A. S. Howard and P. R. Stewart.

Then from page 69 of the same report the letter from
2896 Mr. Covington to the meeting, read by the Secretary.

"To the Delegates of Special Convention, District Number 21,

United Mine Workers of America.

Gentlemen:—I notice in the public press of yesterday afternoon, what purports to be a report of Pete Hanraty, President of District No. 21, to your Convention, in which he makes certain references to Prairie Creek, and the trouble in the Hartford Valley in 1914.

To the end that you may know the truth I earnestly request that you permit me to appear before your honorable body today and present to you the undisputed facts in connection with the entire trouble.

Respectfully submitted,

WEBB COVINGTON."

Mr. Drinker: And from Page 91 of the same record the passage beginning "Prairie Creek Strike", and "our attorney".

"Prairie Creek Strike.

Shortly after the first of April I met R. W. McFarlane of Greenwood, Arkansas, one of the attorneys for the miners who claims we still owe him $2,500.00 and wanted the money as soon as possible as he claimed he did a great deal of the work. In talking over the strike and the law suits that followed by a

number of parties, statements were made by them that led me to believe that some of them at least should be investigated. I went over the records of our office but I could find no reports about how much money was spent and how it was spent nor who spent it, as there were no receipts ex-
2897 cept one I received from Ed Cunningham, while he was acting President, which reads as follows:

'Ft. Smith, Ark., Nov. 8, 1914.

Received of Ed. Cunningham, certified check for $4,000.00 payable to bearer, which check I have cashed and deposited in bank to be held as securing me for making bail bonds for Clint Burris and Jno. Manick, in the sum of $2,000.00 each.

(Signed) BEN CRAVENS."

I waited on Attorney Ben Cravens to find out what was done with the money and he informed me check was deposited in the City National Bank, Nov. 9. On Nov. 23, 1914, the check was turned over to Webb Covington, our attorney."

Mr. Drinker: Now, on page 123, the remarks of Delegate Howard.

"Delegate Howard: Being one of the men from Prairie Creek, I am in favor, highly in favor, of that man being allowed to come up and make a statement. I would hate to go back to my home and have people ask me why that this man Covington was not allowed to kind of clear this thing up before this convention. Every delegate in this convention is here to learn the facts. We don't want anything but the facts. I am not allied with any faction or anything, but I am here to see justice meted out where justice is due. We want the facts and no untold affairs here. The committee brought in no recommendation here, and it is up to this convention to say what shall be done in this matter, and I am in favor of that man coming on this floor and making a statement. There are a few of us people around Prairie Creek that have
2898 been branded as aranchists. My name has been heralded all over the country as an anarchist, and an undesirable citizen. It has been handed to the public until my own class, my own fellow workmen, have branded me the same way, and I am in favor of this being cleared up. (Applause.)

Now, from page 124 to 126 of the same record:

Board Member McLaughlin: Mr. Chairman and brothers: As one of the old Board, I have a word or two to say on this question before this convention. With all due respect to the

committee, I want to inform them that my wife and children are just as dear to be as any other one man in this house; and if you boys have been paying attention to the press in the past, you will notice that the first start of this thing was in the McAlester paper, stating that the parties that were trying President Hanraty up to this time, was fighting him because he had charged District money had been misappropriated, and that he had got the dope, and they wanted him removed from office. I was one of that old Board, and in Hartford Valley during the entire trouble. If there had been anything done that would not meet with the approval of the delegates to this convention, I want to know it. If there has been anythings done there that was not right, or if I did anything that was wrong, I want this convention to know it, and I think it is no more than right that Covington come before this convention and make the explanation to these people, so that they can be satisfied. He can make an explanation that will satisfy everybody in this house, without hurting anybody. That assertion has been made a number of times, that unless
2899 things were changed there were a number going to the penitentiary. I don't know but what I am one of that number. If I have done anything in the past that will put me in the penitentiary, I am willing to go, but I am not willing to stand here quietly, and have it thrown in my face that somebody is to go to the penitentiary. If I have to go, let me go. (Applause.)

Anything that old board did, they are willing to stand and face it, and they have done nothing dishonorable, I don't think. Any money that was spent during that trouble, we are willing to account to the rank and file for, and to this convention. If anything was done wrong, I have nothing to say, but it is up to this convention to judge.

National Organizer Dalrymple: I am not a delegate, but I was a former officer in District 21 for four years.

Chairman Thurston: You are not a delegate?

National Organizer Dalrymple: No, sir, but I was a former officer here for four years.

Chairman Thurston: We want to hear from the delegates.

National Organizer Dalrymple: I want to ask the convention if they will permit me to make a statement or two?

Chairman Thurston: I rule you are out of order.

National Arganizer Dalrymple: You are going to rule that I am out of order?

Delegate Doyle: I move you that the floor be granted to National Organizer Dalrymple.

The motion was duly seconded.

Chairman Thurston: There is a motion before the
2900 house, brother Doyle.

Delegate Stewart: I rise to a point of order on that ruling. All national officers are allowed a voice.

Chairman Thurston: I want to hear from the delegation from this District, then if the delegation has nothing further to say, then we will hear anybody else.

Delegate Stewart: But he was a member of the old Executive Board, and is a National organizer, and whenever an International President sends officers to a convention, they are allowed a voice. There are some National Board Members here, and I want to know if I am correct in that.

International Board Member Frampton: As far as I know, a National representative has never been refused the floor of any convention of the United Mine Workers.

Chairman Thurston: I will [retrace] my ruling."

Mr. Drinker: And on page 1C2 of the same record the following: Mr. Covington, (Speaking):

"I now speak to the members of the old board. Did you fellows tell me to do what I did in the Prairie Creek district?

Delegate Stewart: I, for one, said go ahead, we will protect the members of our organization that got into trouble in the Hartford Valley, to the last ditch.

Delegate Cunningham: That was with the full consent of the board.

Board Member Meachlin: Yes, sir, we told you to go ahead and we would stay with you.

National Organizer Dalrymple: Yes, sir, that is
2901 right."

Mr. Drinker: From the same proceedings, on page 658, the following:

"Secretary Douglas: I have a telegram here I want read:

"Fort Smith, Arkansas, October 2nd, 1915, T. B. Douglas, Secretary United Mine Workers District 21, McAlester, Oklahoma. Have P. R. Stewart come here on first train, need him matter connected with parole McNamara. Also his own case pending at Denver. Have him leave there on first train. It is absolutely essential that he be here early tonight.

COVINGTON AND GRANT."

Chairman Thurston: Gentlemen give us order now, I will call for the report of the Resolution Committee.

Delegate Plymale: Mr. Chairman, the report we have is on the telegram only.

Chairman Thurston: Yes, sir. that is all.

Delegate Plymale: To the Special Convention: Telegram received this morning from our brother now in Leavenworth, James K. McNarama, calling your attention to the fact that from some cause his pardon has failed; therefore, be it resolved that this convention make another effort in his behalf and as P. R. Stewart, being thoroughly familiar with this case, having made on trip to Washington in this brother's behalf, therefore, we, your committee, recommend that P. R. Stewart be sent to Washington at the earliest date possible and shall be allowed his salary and expenses for making said trip. And we further recommend that the District pay his railroad fare and expenses for the former trip to Washington in
2902 behalf of these brothers' pardon.

And we further recommend that James K. McNamara be wired the action of this convention

Unanimously concurred in by the Resolution Committee.

I move you, Mr. Chairman, the adoption of the resolution.

The motion was duly seconded.

Chairman Thurston: It has been regularly moved and seconded we adopt the resolution as read Are there any remarks? The question being called for, all in favor let it be known by saying aye; contrary, no. The ayes have it."

Mr. Drinker: And from page 929 of the same book, as follows:—

Mr. Warrum: Of course, the defendants renew their objection to all of this class of testimony.

The Court: Very well. Overruled.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

"Delegate Plymale: Mr. Chairman and Brothers: I will state before reading this that a portion of this resolution was covered in substance by a resolution passed a few days ago, with reference to the telegram received from Brother McNamara. I want to make that statement before reading this, so that we will not get confused. (Reading):

To the Officers and Delegates of the Special Convention:

We the undersigned submit for your consideration the following bills that were contracted and paid by Local Unions No. 1526 and No. 1912, located at Hartford, Ark.:

2903 Same being contracted in connection with the trouble that arose at Prairie Creek, Ark., and of which bills read as follows:

"Hartford, Ark., Sept. 20, 1915.

District No. 21, U. M. W. of A.
to
John Conroy, Dr.

To railroad fare to Kansas City and return,	$20.00
To street car fare from Kansas City to Leavenworth and return, including hotel bills, etc.	10.00
To four days' services at $3.90 per day,	15.60
Total	$45.60

This bill is for services in connection with the presentation of petitions for the parole of James McNamara, now confined in the Federal Prison at Leavenworth, Kans. on a charge of conspiracy in connection with the Prairie Creek trouble.

(Signed) JOHN CONROY.'

'Expenses incurred by Oscar Layton and James McNamara as a Committee elected by Local Union No. 1526, to see Judge Little in connection with James K. McNamara parole.

One day, Oscar Layton,	$3.90
Transportation and hotel expenses,	3.35
One day, James McNamara, Sr.	3.90
Transportation and hotel expenses,	$ 3.35
2904 Total	14.50

(Signed) OSCAR LAYTON.'

'P. R. Stewart.

September.

Date	Salary		
9th	$3.90	Railroad fare one trip, return Fort Smith to Hartford and Kansas City return,	$20.00
10th	3.90	Two return trips	
11th	3.90	Kansas City to Leavenworth,	
12th		Hotel bills, four days,	10.00
13th	3.90	Fort Smith, Little Rock 4.77	2.00
14th	3.90	Little Rock, Fort Smith 4.77	2.00
		Total expenses,	$65.04

Note: This bill is for services with getting petitions and presenting them to the proper Board in trying to get Jim McNamara out of the Leavenworth pen, who was given two years in connection with the Prairie Creek trouble.

The Locals in Hartford borrowed one hundred (100.00) dollars to help to get this Brother out of Leavenworth.

Yours truly,

(Signed) P. R. STEWART."

The foregoing bills make it plain that they are bona fide claims made in the interest of those who are members of our organization, while they cannot at this time raise their voice in behalf of themselves, and therefore, the above men-
2905 tioned locals made it possible for their appeal for executing clemency to reach those in authority to grant same.

Therefore, Be It Resolved, That this convention authorize the payment of said bills hereinbefore mentioned by reimbursing said Local Union for same.

H. C. JONES, L. U. No. 197,
JONATHAN FOSTER, L. U. No. 2889,
ARTHUR CROSS,
MAT BAYLIN, L. U. 1136."

Concurred in by the Committee.

Delegate Hobbs: I move we adopt the report of the committee.

The motion was duly seconded.

Chairman Thurston: It has been regularly moved and seconded that the committee's report be adopted. Is there any discussion? All in favor of the motion let it be known by saying aye; contrary, no.

The motion is carried."

Mr. Drinker: And from page 971 the same proceedings:

Delegate McSpadden: The committee that was appointed yesterday evening, we your committee to whom was referred the cases of Fred W. Holt, John Mamik, Oscar Layton, John Champion, James Slankard, Bill Reed, Dave Branch, James McNamara, Sandy Robertson and Clint Burris, who have served or are now serving terms in jail, we recommend, owing to the financial condition of the District, that the claims of compensation be denied. D. G. McSpadden, James Aubrey concurring; Nat Rossetto non-concurring.

2906 Chairman Thurston: You have heard the report of your committee.

Delegate King: I move to accept the report as read.

The motion was duly seconded.

Chairman Thurston: You have heard the motion. Is there any discussion?

Delegate Leonard: I move you that we accept the report as read, the majority report.

Chairman Thurston: It has been regularly moved and seconded we accept the majority report, and that is to concur in the report."

Mr. Warrum: The defendants object to this testimony as it can throw no light on the issues in this case, this occurred long after.

The Court: Insofar as it goes to show the payment of expenses that might show that the district participated in it, it is competent, but it is long after, and it cannot be a ratification.

Mr. Drinker: It shows that they denied the claim on the ground that they had no money.

The Court: What of it; there is plenty to show that they did pay?

Mr. Drinker: We next offer from the proceedings of District 21, being Exhibit 53 of the old record, report of the Grievance Committee in 1916, showing that John Manick and James K. McNamara were delegates.

On page 141 of Mr. Covington's speech in the District
2907 Convention of the same book.

Mr. Warrum: Now, if the court please, it appears that Mr. Covington was the attorney for these people. Now I

assume that the communication is privileged. Now, it may be answered that this is printed, but they required the defendants to produce it, and they printed it for their own use, and they required us to produce it.

The Court: What Mr. Covington said would be purely hearsay, and this is a long time after it occurred.

Mr. Drinker: He was telling District 21, he was there to explain certain matters and he was not giving legal advice at all. I don't want to say before the Jury what he was explaining, but there is one statement that I ought to show that he made, and it was in a convention of District 21, about President Stewart, on the 6th of April. May I show you that passage? It is just to show why Stewart took that trip. The other evidence shows that he was in Kansas City with White, and came here and went back again.

The Court: I know, but this is merely Covington's opinion of that matter.

Mr. Drinker: This is a statement by him to District 21 of a fact. Mr. Covington was a conspirator,—

The Court: I will not allow it at this time.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

Mr. Drinker: I offer this passage.

The Court: Objection sustained.

2908 (The matter referred to, to which objection was sustained, is in words and figures following to-wit:)

"At the time the people gathered at No. 4 in April, 1914, I was at Kansas City representing the National Organization in the trial of a cause pending in the courts in that city, when a telegram came announcing there had been trouble at Prairie Creek. Upon receipt of this telegram your president, Mr. Stewart, left Kansas City and came to Arkansas for the purpose of ascertaining the cause of the trouble."

Mr. Drinker: I think that is all.

The Court: The time has arrived to take an adjournment till tomorrow morning. Under the admonition of the court, gentlemen of the jury, you will pass and return tomorrow morning at 10:00 o'clock.

The Court: You will announce a recess until 10:00 o'clock.

(Whereupon an adjournment was taken until Thursday, October, 25, 1923, at 10:00 o'clock A. M.)

2909 Thursday, October 25, 1923.

Pursuant to adjournment, at 10:00 o'clock A. M., court reconvened, the parties appearing as before, and the following further proceedings were had and entered of record:

The Court: Proceed with the trial.

Mr. Drinker: Call Mr. Roberts.

M. A. ROBERTS, called as a witness on behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Give your full name to the reporter, please?

A. M. A. Roberts.

Q. Mr. Roberts, what is your occupation?

A. Farming at the present time.

Q. Did you work for the Bache-Denman Coal Company in 1914? A. Yes, sir.

Q. What sort of work did you do?

A. Well, I did first one kind and another.

Q. Did you do some guarding there?

A. No, sir, I don't believe I guarded any; I worked under the ground most of the time.

Q. Prior to that time you had been a farmer?

A. Yes, sir.

Q. Did you testify in a previous case as to the local incidents that happened while you were there? Do you remember of testifying in this same room about six years ago?

2910 A. It has been over six years, has it?

Q. Do you remember testifying, however long ago it was?

A. I have never been in this trial before; they had [be] down here a time or two while we were working there for things that would occur along the road, but in this trial I have never been here before, in this trial, I don't think.

Q. I may not have made it clear and there have been two or three proceedings, as you stated, but I will show you the record of the previous case where you were questioned by Mr. Hull, a tall man—do you recall that? Can you read?

A. A little, but not to do much good.

Q. I will start you off, you are asked your full name, and you stated it, and asked where you lived, and you answered at Hartman, is that correct, is that where you lived?

A. Yes, sir.

Mr. Lucas: Now, we offer the testimony of Mr. Roberts as it appeared in the former record at pages 1554 to 1556, inclusive, and since this is one of the witnesses they wanted us to bring, we offer him now for cross-examination.

Mr. Warrum: I have never yet heard of offering testimony in this manner. The witness is here now, on the stand.

Mr. Drinker: If you object to it, we will examine him.

The Court: Proceed with the examination.

By Mr. Lucas:

Q. You stated you were a farmer? A. Yes, sir.

Q. And had been before you went with the Bache-Denman Coal Company?

2911 A. I farmed and dug coal some, too.

Q. You did dig coal, did you? A. Yes, sir.

Q. What time did you go down to the Bache-Denman Coal Company at Prairie Creek?

A. I don't remember just what time, it seems to me like it was about May, some time in May.

Q. Some time in May?

A. Yes, sir, as well as I remember it.

Q. What sort of work did you do, dig coal?

A. Yes, sir, I loaded coal and shot coal some for them, and helped on the air, and did one kind of work and another under the ground.

Q. Were you there the day of the big battle?

A. Yes, sir.

Q. How long were you at the camp on that day?

A. I left there about 11.30, I guess, I don't know just what time it was.

Q. Do you remember with what group of men you went away? A. I believe I remember some of them.

Q. Just name some of them.

A. Old man Bud Eustis and Buster Moore were with me.

Q. You left with Buster Moore? A. Yes, sir.

Q. When you left the mine had any of it burned?

A. No, sir, nothing was afire when I left.

Q. Did you set fire to any part of the mine before you left?

2912 A. No, sir.

Q. How many men left with you?

A. I believe 37 all told, and I think two ladies, 35 men.

Q. Did you hear a great deal of shooting while you were there? A. Yes, sir, a good deal.

Q. Can you describe it briefly?

A. I don't know as I could; from both sides, I suppose, there was shooting, I suppose there was.

Q. About how many shots were fired?

A. I can't just say, several hundred, I guess.

Q. Do you remember seeing the tipple on fire when you looked back?

A. I was a half a mile or more away before I seen the smoke rising.

Q. What did you see then?

A. I saw smoke rising, but I was not sure from where I was that it was the tipple.

Q. Were you captured when you were leaving?

A. No, sir.

Q. Did you start out with the two Doughit boys?

A. Yes, sir.

Q. But you got off in another party from them?

A. Me and another party turned back, when they commenced shooting toward us, or seemed toward us, the dirt was flying like they were shooting toward us, we turned back, me and another fellow, I don't know his name, and went into a thicket for a while, and then back, and about 11.30 we left there.

2913 Cross-Examination

By Mr. Warrum:

Q. When did you go to this camp?

A. I think in May some time.

Q. And stayed until the time of the big battle?

A. Yes, sir.

Q. Who came to get you to go there?

A. Mr. Shaleen.

Q. Mr. Shaleen? A. Yes, sir.

Q. Was he a guard?

A. No, sir, I suppose he was getting men to go there to work.

Q. Was he armed? A. Yes, sir.

Q. Did you go down on the train with him? A. No, sir.

Q. Did you go on the train at all? A. Yes, sir.

Q. When you got off the train, who met you, armed guards?

A. Yes, sir, some men, I don't know who they was.

Q. Any guards on the train going down there, whether Shaleen or anyone else?

A. No, sir, not that I know of.
Q. Just you by yourself?
A. There were more men than me went there to work.
Q. How many?
A. I believe there were six at the time I went.
2914 Q. You were met at the station by armed guards and taken out to the stockade? A. Yes, sir.
Q. And you stayed there from that time until July 17th?
A. I went back home a time or two during that time, but you might say I worked there from the time I went until in July.
Q. Did they tell you that there were plenty of guns there for use? A. Yes, sir.
Q. Did you see guns around there? A. Oh, yes.
Q. How many, a hundred,
A. Well, I can't say how many, I never seen nothing like that many at once.
Q. Did you hear any shooting before the big battle of the 17th?
A. A night or two before I heard some shooting.
Q. Did you see or hear the guards shooting around the camp?
A. I did not until the day of the battle.
Q. You didn't see them going around with guns, shooting different places?
A. I seen them carrying the guns around but not shooting.
Q. There was a good deal of drinking going on?
A. I can't say there was much.
Q. There was some? A. I suppose there was.
Q. You know there was, don't you?
A. No, I do not.
2915 Q. Some gambling going on?
A. I didn't see a man take a drink, I can't swear that he drank without seeing him.
Q. There was some gambling going on?
A. I think there was some.
Q. A pretty rough crowd?
A. It was reasonably rough enough for an ordinary man, I guess.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness Excused.)

Mr. Lucas: I believe that under the stipulation, I omitted to read into the record the testimony of W. R. EUSTICE found at page 1748 to 1750 of the record, and I also, in checking up, found that I omitted to offer the testimony of Dr. Oscar M. Neal at page 1312 to 1316, inclusive,—Dr. Neal being now dead; and we wish at this time to offer the evidence from the former record of those two witnesses.

"Direct Examination

By Mr. Hull:

Q. Your name is W. R. Eustice? A. Yes, sir.

Q. Known as Bud Eustice? A. Yes, sir.

Q. Were you working for the Bache-Denman Coal Company in the spring of 1914? A. Yes, sir.

Q. What position did you hold on July 17, 1914?

2916 A. I was a bossing, me and Mr. Moore.

Q. Were you under Buster Moore?

A. Yes—well, we were together, I don't know whether—I don't know which was foreman, we were both together.

Q. You had charge of the underground work?

A. Yes, sir.

Q. How long had you been there approximately on July 17th, 1914?

A. About three weeks, I think, something about three weeks.

Q. Do you remember the day of the big battle, July 17th?

A. Yes.

Q. What occurred the night before and during the day?

A. Well, the night before we was up, a good many of us, Buster Moore was at home and I was staying out and about midnight they cut our lights out, cut the wire and put us in the dark, someone did and they cut our 'phone lines. We had been looking for trouble al lof the time and I had charge of the guns then and I said, 'We had better get the guns for we are going to have trouble', and we ran in the office and got the guns. I had mine and I gave the boys a gun apiece.

Q. We have been over this same battle so much, I will just ask you a few questions. A. All right.

Q. Do you remember when the first shots were fired early in the morning?

A. Just before day I think, when they fired any just before day I didn't. I stayed up until just before daylight and I was so sleepy I went in and laid down on my cot in the

2917 tent and laid my gun down on the ground and I guess I was asleep by the time I hit the bed, and someone said I didn't wake up before they fired.

Q. What happened?

A. They came and woke me up and I asked if any were hurt and they said no, and we stayed around there maybe ten or fifteen minutes and daylight got so we could see and I took Pat Malloy and I forget the other fellow's name and went down the railroad down to the dirt road and went down the dirt road maybe 150 yards in a V kind of shape and there were shells scattered along the road.

Q. How many shells did you pick up? A. Sixty-six.

Q. What kind of shells were they?

A. They were some big Winchester shells and some shotgun shells and some were thirty-twos.

Q. Where did you find those?

A. About 150 yards of where we was all at, or maybe 200 yards—not over two hundred yards. Right through the woods it would not be over 150 yards.

Q. Was that about day break?

A. Yes. And we went down at No. 3 to Brown's tent. The women hadn't gotten up, and we asked them if there had been shooting there and they said yes, and we asked them if anyone got shot and they said no, and we met Mr. Brown.

Q. The man who was on the stand this morning?

A. Yes.

2918 Q. Were you there all the morning through the battle?

A. Yes, sir.

Q. What time did you leave the mine?

A. Well, it was something betwixt half past twelve and one o'clock.

Q. Did you leave with Buster Moore in the crowd?

A. Yes, I was the last one crossing the fence.

Q. After you got away from the mine a little ways did you look back and see No. 4 burning?

A. Yes.

Q. How far did you get?

A. I imagine about a mile over on the hill towards the station where the box cars were standing.

Q. Was No. 4 burning when you left it?

A. No, sir.

Q. Do you remember the Sunday night before the battle, and when it was said that some of the Bache-Denman employees went over to Frogtown and shot the place up?

A. On Sunday evening?

Q. Yes.

A. Yes, sir.

Q. Do you know anything about any of your employees going over there and doing that?

A. No, sir. We had a few guards out on duty and the rest of them were around the mine. We thought that they were going to charge us and we were fixing for them.

Q. Did you hear the shots from over in Frogtown?

2919 A. Yes, sir, as plain as you want to."

(Witness excused.)

"Direct Examination

By Mr. Hull:

Mr. Hull: If the court please, the testimony of this witness is a little out of chronological order, but DR. NEILL is a busy doctor down at Midland and he is in town today, and I felt we could put him on and let him get away. I wanted to make that explanation to the court.

Q. What is your full name?

A. My initials or the full name?

Q. Your full name.

A. Oscar Melvern Neill.

Q. Where do you live?

A. Midland.

Q. You are a practicing physician there?

A. Yes, sir.

Q. How long have you been in that profession in that community? A. About 14 years.

Q. On or about May 25th, 1914, Dr. Neill, did you hear Pete Stewart make some remarks in front of McGee's drug store in Midland? A. Yes, sir.

Q. Will you state to the jury as near as you can remember what Mr. Stewart said at that time?

A. Well, he and Judge Little came up there in a car, and he was talking, and he made a remark that attracted my

2920 attention; he said something like this, 'They are armed out there, and they are outraging our women and girls, and if they want to start another Colorado, why, they can do so,' or something like that. I don't remember just word for word how he spoke it.

Q. Did he say anything about guns?

A. Yes, sir, he said it was no secret that everybody went armed, and anybody that wanted arms could get them; I believe, to the best of my recollection.

Q. Did he say anything about that he would see that they got them?

A. Yes, sir, I think that is the way that he put it, or that is the way I understood it, anyway.

Q. Did he say anything about when they could get them?

A. Well, I don't remember whether he said, just stated the date or not. I don't believe he did. I think that was about what he said, that anybody that wanted arms could get them, as well as I remember.

Q. Do you remember who Peter Stewart was?

A. Well, I knew, yes, sir. Yes, sir, I knew, they said that he was the president of District 21.

Q. Of what organization?

A. Of the United Mine Workers.

Q. Did you know who Paul Little was at that time?

A. Yes, sir.

Q. What was his profession?

A. Prosecuting attorney of this district, I believe.

Q. About how many people heard those remarks, how many people were there?

2921 A. Well, there were not very many at that time. It was shortly after noon, and there had not so very many got back on the streets.

Q. Can you approximate how many there were?

A. Oh, a half a dozen standing around there, I guess; there possibly might have been more, but I don't remember.

Q. Do you remember any men that were there?

A. Yes, sir. I remember myself, and a Mr. McGee, and Mr. Robinson, and I am not so sure, but I believe the postmaster was standing there.

Q. What was the postmaster's name?

A. Counsel; Blake Counsel. I believe he was standing out there, but if he says he was not, I would not argue the question; but I believe he was there.

Q. Was Bud Porter there?

A. Yes. sir, I think Bud was there.

Q. Was Mr. York there?

A. Yes, sir, I think possibly that Parson York was out there.

Cross-Examination

By Mr. Warrum:

Q. Now, Doctor, what time of day did you say it was?

A. In the afternoon, somewhere about 2.00 or 2.30, possibly 3.00 o'clock; I don't remember just when.

Q. Where was it?

A. In front of McGee's drug store.

Q. At what place? A. Midland.

2922 Q. Midland? Was there a general conversation going on?

A. Well, probaly there might have been; I was talking to another man when this remark was made that attracted my attention.

Q. The remarks—could you tell from the remark whether it was made in the course of a conversation between these number of men that you have spoken of that were standing around, or did it seem to be entirely separate, nothing before or after?

A. Well, yes, I rather think there was some talk.

Q. Part of a conversation?

A. Yes, sir.

Q. And he said that they had insulted and outraged their women, and if they wanted another Colorado they could have it, ain't that what you say he stated?

A. Something like that, yes, sir.

Q. Did he not state that they did not want another Colorado around there?

A. Now, I didn't understand it that way. He probably did.

Q. He might have said that, might he?

A. Yes, sir, he might have said that.

Q. Is your recollection so definite upon that point that you would want to state just exactly what his reference to another Colorado was?

A. The way I understood it: 'If they want to start another Colorado, they can have it.'

Q. Now, who else was there, you say?

A. Well, I remember these parties that I spoke of, and possibly there were more there.

2923 Q. Who was Mr. York?

A. Well, he was a coal digger there.

Q. What business was he in?

A. None whatever. He is a local preacher around there, preaches around.

Q. A local minister?

A. No, he is a preacher, he preaches around there.

Q. I mean by a minister a preacher of the gospel?

A. Yes, sir.

Q. Who was another one of the men there?

A. A. W. McGee.

Q. What business was he in?

A. He was at that time in the drug store.

Q. He was a druggist there?

A. Yes, sir.

Q. And another man was Paul Little?

A. He came in a car with this man they said was Pete Stewart.

Q. He was there at the time of this conversation that you speak of?

A. No. Now if I remember correctly, when the car came up and Paul got out of it, he got on the sidewalk, and somebody and him walked off up the street, about to the old woman's place of business.

Q. Did you say a moment ago on direct examination that Paul Little was in this crowd at the time of Pete Stewart's remarks? A. He came in the car.

Q. That Paul Little, is that the present Circuit Judge
2924 of this county? A. Yes, sir.

Q. Prosecuting attorney then, was he not?

A. At that time he was.

Q. Now, there was a good deal of excitement around in that community about the insults to girls, by these armed guards was there not? A. Yes, sir.

Q. A good deal of talk about it?

A. Yes, sir.

Q. Other people besides Mr. Stewart were talking about it? A. Everybody in the neighborhood.

Q. Was there any talk at that time about Riley Bailey having insulted one of the young girls in that neighborhood, and having been arrested and fined for it?

A. Yes, sir, I think I heard some talk about it.

Q. Was it not Mr. Pete Stewart discussing that particular incident?

A. He probable was; I can't say that he was.

Q. Was there not other instances discussed there at that time? A. Probably there was.

Q. About insults to school girls that went to the Prairie Creek school, by these armed guards?

A. Probably there was.

Q. What was the discussion,—that was being discussed in that neighborhood, was it not?

A. Oh, yes; yes.

2925 Q. Now, was it with reference to the remarks that Mr. Stewart made, with reference to guns, was it not this, that if they had to prove protection, if they needed protection and had to have a gun, that they could get them, the people in the community?

A. Probably it was.

Q. Is that your recollection?

A. Just as I stated it a while ago.

Q. Well, did other people talk in this assemblage, anybody else make any remarks, Doctor, besides Peter Stewart?

A. I don't remember it that way.

Q. You mean that that is the only one?

A. Pete had the floor.
Q. Pete had the floor? A. Yes, sir.
Q. And that is the only statement that you recollect; if anybody else stated anything, you don't recollect it, is that it?
A. I was listening to him, there might have been some others talking around there, but I was listening to what he said."

(Witness excused.)

Mr. Lucas: I believe that includes all of the local witnesses with the exception of Mr. Dalton, who we are still trying to bring into court.

Mr. Drinker: Call Mr. Good.

2926 H. L. Good, called as a witness in behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:
Q. Just give your name to the reporter.
A. H. L. Good.
Q. What is your position? A. When, now?
Q. Yes.
A. Division superintendent of the Westmoreland Coal Company.
Q. Where? A. Irvin.
Q. Pennsylvania? A. Yes, sir.
Q. What was your position in 1914?
A. Superintendent of the Manergus Coal Company.
Q. Where was that? A. At Cleary.
Q. You were superintendent in the Irwin field in 1911?
A. Yes, sir.

Mr. Warrum: The defendants object as utterly immaterial and irrelevant. If matters of that kind are to be gone into by the plaintiffs, it will necessitate bringing witnesses from the Irwin field, and disclosing conditions prevailing there under non-union operations, and this trial should be limited to the issues here, but if it is not, it will become a trial of all of the coal troubles over the country. It was excluded at
2927 the last hearing, and has no proper relation to this case.

The Court: I can't see how.

Mr. Drinker: We are going now to prove the allegations of the complaint that this strike down here was merely a part of a nation wide conspiracy to throttle non-union coal in interstate commerce. The conspiracy began away back. Plaintiffs allege these incidents, and have skipped a large part of the first ones, and we now call this man to show what happened in the Irwin strike, that was run by the national organization, and then we are going to West Virginia and show what happened there, and in each case with one witness or two, and then out of the Journals, articles to show that this was a conspiracy between the national organization and the districts to throttle non-union coal in interstate commerce.

The Court: No, we will try this case, not Colorado or West Virginia or any case except this one.

Mr. Drinker: Will your Honor hear me on that and let me call your attention to the complaint? This is one of the allegations of our causes of action. I would like to show you the complaint on that.

The Court: I have read the complaint in this case. Now, just a moment until I make an observation. It must be very apparent to counsel here to take up troubles in the Colorado field and West Virginia field and Pennsylvania field or some other that is apart from this, that if you try it on one side that you must try it on the other, and we can not do it.

2928 Mr. Drinker: Where we allege a conspiracy which consists of several steps of that kind, how can we prove it unless we are allowed to try it?

The Court: That could not be any evidence at all in this case.

Mr. Drinker: It contains incidents and matter,—

The Court: Save your exception and let's proceed. I don't care to discuss the matter.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

Mr. Drinker: Won't your Honor allow me to read the complaint and hear me on that proposition?

The Court: I say I have read the complaint.

Mr. Drinker: Your Honor observed the paragraphs in which it is alleged as a necessary step, not as a necessary step, but as steps which the other side say they took in connection with this conspiracy, and we want to show there was a contin-

uing conspiracy between the national organization and the officers thereof, and the district organization and their officers, and everybody connected with this organization, to throttle non-union coal in interstate commerce.

The Court: None of these parties are parties here.

Mr. Drinker: We are going to show the conspiracy here, and the facts connected with that conspiracy.

The Court: You will not be able to do that.

Mr. Drinker: I will make an offer then. I may say that we will get through with this whole line of testimony in one day.

The Court: You can ask the witness questions and save your point.

Mr. Drinker: Can I do it in the form of an offer?

2929 The Court: Proceed in your own way, but I suggest that the witness is here, and anything that you have that tends to show the connection of the officers' power to bind the United Mine Workers in this affair here is perfectly admissible, and any evidence of that kind I will permit.

Mr. Drinker: And this witness will testify to all that happened three years before this strike.

The Court: This witness knows nothing about this?

Mr. Drinker: Not a thing in the world, except he knows the methods they used all over, which is the same as here.

Mr. Warrum: That is a violent assumption.

The Court: I can not hear that.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. (By Mr. Drinker) Are you familiar from your personal knowledge with the events which happened in the strike in the Irwin field in 1910 and '11?

Mr. Warrum: We renew the objection, it is immaterial whether he is familiar with the events there, and an answer to this question would not qualify him to testify to these events, and we object to the evidence because it leads to collateral matters, and will involve necessarily a hearing of both sides as to the cause that led up to the Westmoreland strike.

The Court: The Court being of the opinion that this is purely a collateral matter, the objection is sustained.

To which action and ruling or the court the plaintiffs, and each of them, at the time duly excepted and still except.

2930 Q. Are you familiar with the methods employed by the United Mine Workers in conducting that strike?

Mr. Warrum: The defendants renew their objection.

The Court: The same ruling.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Did you see the members of the United Mine Workers, local and district organizations, present participating in those events?

Mr. Warrum: The defendants renew their objection.

The Court: The same ruling.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Did you see acts of violence instituted by these members and representatives during that strike?

Mr. Warrum: The defendants renew their objection.

The Court: The same ruling.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Are you familiar with the methods employed by the United Mine Workers in connection with that strike to insure publicity of their side of the affair?

Mr. Warrum: The defendants renew their objection.

The Court: The same ruling.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

2931 Mr. Drinker: I will make an offer. I offer to prove by the witness on the stand and other competent witnesses that in the years 1910 and 1911 a strike was conducted in the Irwin field of Pennsylvania, endorsed by the national organization of the United Mine Workers; that the purpose of that strike was to organize the then open shop mines in that district, for the purpose of protecting the operators op-

erating union mines in adjoining states; that that strike was conducted with violence, intimidation, deliberately by the United Mine Workers for that purpose; that the national organization knew and approved of those matters; that this was a step in a nation wide conspiracy conducted by the United Mine Workers in all of the districts, and the members thereof, for the purpose of throttling non-union coal, or open shop coal, and keeping it out of interstate commerce.

Mr. Warrum: We renew our objection to the offer as made to the question being asked, as being collateral.

The Court: The court being of the opinion that this is an attempt to try an entirely collateral issue, the objection is sustained.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker: We offer to prove by this witness and other competent witnesses that during that strike the United Mine Workers deliberately conducted a campaign of publicity with the intent to deceive the public into believing the facts to be
2932 different from the facts deliberately circulated to the public, for the purpose of inflaming the miners of the districts, and getting a public opinion on their side, and that this was a part of the conspiracy in question; and further, that the system of publicity, their methods or acts, and the whole matter of conducting the strike was of such a nature as to show on their face a similarity with the methods employed in the strike in Arkansas in 1914, as to produce the inevitable conclusion that it was all a part of the same scheme and conspiracy.

The Court: Now, your question relates to what was done in the Pennsylvania field.

Mr. Drinker: Yes, sir, this witness knows nothing whatever, from his personal knowledge, of the facts in the Arkansas field.

The Court: I did not want you to put anything in the question relating to this trouble.

Mr. Warrum: The defendants renew their objection.

The Court: Sustained, on the same ground.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker: I further offer to prove by this witness the facts alleged in paragraphs 15 and 22 of the complaint. Now, if your Honor please, I am going to offer—I offer from the United Mine Workers Journal, an article on page 1, of the issue of June 16th, 1910. This relates, I will say, solely to the Irwin field, showing the authorization of the strike by the international organization.

Mr. Warrum: The defendants renew their objection, if the court please.

2933 The Court: The same ruling.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker: It is offered also for the additional purpose, if I have leave to state, I offer to show by the article referred to—

Mr. Warrum: It is documentary, and will show itself without a speech by counsel at all.

The Court: You can state the purpose for which the offer is made; of course, the article will show itself.

Mr. Drinker: I will offer another one; this one does not show by itself. I offer from the United Mine Workers Journal an article on page 1 of the issue of July 7th, 1910, and an editorial on page 4 referring to that article. Now this article is offered for the purpose of showing that the international organization, which published the Journal through its Executive Board, gave publicity to its membership—the constitution requiring that it be read by the local secretaries, that notices be read by the local secretaries,—gave the publicity to its membership of articles describing methods used in connection with strikes conducted by the national organization, which on their face are inconsistent with any attitude of law abiding, or inconsistent with anything but the use of violent methods. That is offered for the purpose of showing that for three years prior to the strike in Arkansas the United Mine Workers circulated to its membership information in articles which amounted to an instruction to the district mem-
2934 bers as to the methods approved by the national organization in strikes, which it admittedly conducted, for the purpose of showing an indictment of the organization to use similar methods in other strikes.

The Court: Now, this article you are offering relates to Pennsylvania entirely?

Mr. Drinker: Yes, sir, entirely, three years before this strike.

Mr. Warrum: The defendants renew their objection on the ground that it is collateral.

Mr. Drinker: This will be followed by other articles bringing it right down to date.

The Court: On the ground that it is an attempt to try a collateral matter, the objection will be sustained.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker: This is to show an approval by the national organization of the methods used in Arkansas in 1914.

The Court: The Pennsylvania and West Virginia and Colorado strikes are purely collateral matters.

Mr. Drinker: May I call attention, your Honor, to the fact that in connection with this second purpose, for which these Journal articles are offered, that it does not make any difference what are the facts which actually happened in connection with these strikes, the only thing that makes a difference, under the present offer, is that the United Mine Workers said certain things happened without disapproval in all
2935 cases, and with express approval in many cases, thereby inciting and authorizing the officers to use those methods in other cases. Now, in connection with these matters, it would not be relevant for the other side to bring proof as to what actually happened. The only way they could rebut that would be by showing other instructions to their membership and districts to counteract the instructions contained in these articles, so that does not involve the consideration that it would involve a retrial of those strikes.

The Court: The ruling is the same

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker: Now, I want to offer these other articles in connection with the Irwin strike. I don't need to recite them all at this time, if I may give them to the stenographer in order to make my offer. I can make an offer of each one, but if I may give them to the stenographer with the ruling and objection, certainly it will obviate that necessity.

The Court: Very well.

Mr. Drinker: Your Honor will grant me an exception to these rulings?

The Court: Certainly.

Mr. Drinker: In each case an exception?

The Court: Yes, sir.

Mr. Drinker: Now, I offer five articles from the United Mine Workers Journal relative to the strike in Vancouver Island in 1913 and 1914, for both the purposes specified, the purpose which I specified in my offer in connection
2936 with Mr. Good's testimony, which I desire to have inserted in the present offer, and also the purpose for which I offered the Journal articles in the Irwin strike, which I desire to have inserted in the present offer. These articles make no mention of Arkansas troubles specifically.

Mr. Warrum: I understand that he is offering them now, and the defendants severally renew their objection for the reasons heretofore given.

The Court: The same ruling.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker. They range from October 30th, 1913, to April 9th, 1914.

The Court: Hand the stenographer a list of them and let counsel examine them.

Mr. Drinker: I will, sir.

(From the United Mine Workers Journal June 16, 1910—page 1)

Hayes Pays Visit To Irwin Field

Greensburg, Pa.

The coal strikers in the Irwin field have received hearty encouragement from the international officials of the United Mine Workers of America, who were here as an investigating commission.

"We have come into the Irwin field, and we expect to stay camped here until we have every man organized,"—declared Frank J. Hayes. "All we ask of you men is loyalty to yourselves and to the cause and we will do the rest," said Mr. Hayes. These words bring the most cheering encouragement

to those who have known little or nothing of industrial freedom.

2937 Looked Over Situation

The investigating commission, composed of Vice President Hayes and International Executive Board Members Thomas Haggerty, George Dagger, T. J. Smith and Thomas Powell, returned to Indianapolis after spending a day among the miners of this field.

Vice President Hayes and Board Member Haggerty held enthusiastic meetings at Latrobe and Greensburg, while the other members of the commission, with the assistance of District Vice President Van Bittner of Pittsburg, conducted the meetings at Irwin and Madison.

In the course of his addresses at Latrobe and Greensburg, Vice President Hayes said in part:

"We have come here from the highest governing body of the United Mine Workers of America to investigate the progress of the strike in the Irwin field so that we may be in a better position to render you such aid as may bring this warfare to a successful end. This strike has got to be won, for we cannot afford to lose it.

"I pledge to you my fellow workmen, my hearty co-operation and sympathy, and that when I return to Indianapolis I will do everything in my power to bring aid and assistance to you struggling men. It is necessary that you make this strike a success if you want to have a taste of freedom in the future.

"Under union conditions you cannot be robbed as you are now, and unionism means new life, new hopes, and blessings never before enjoyed."

(From the United Mine Workers Journal June 23, 1910—page 4)

"There is nothing new to report from the Irwin field in Pennsylvania, and the boys are hanging together in a
2938 tenacious manner and under adverse conditions. The mounted cossacks and the company thugs are earning their measly pittance protecting the rights—supposedly—of the corporations who hire them."

(From the United Mine Workers Journal June 30, 1910—page 4.)

"The Irwin, Pa. field has also assumed a peaceful attitude. By this we mean the newspapers have quit sending out scare

heads about the violence done by the strikers, most of such violence being done when they sat down to write about it and drawn from an inflamed and perverted imagination."

(From the United Mine Workers Journal July 7, 1910, Page 1.)

Situation In The Irwin Field

(By Van Bittner, Vice President District 5, U. M. W. of A.)

"This is the fifteenth week of the great strike that is being waged by the miners of Westmoreland county against the greedy, corporations who, through their tyranny, had established slavery in a worse form that it was in the south before the now historical Civil war.

It was the first week in March that the miners of this field decided to strike a blow for freedom for themselves and their families, and they are surely putting up a fight that would make any man proud that he is a member of the United Mine Workers of America. Yes, these men who are fighting under the most adverse conditions are displaying a spirit that is astonishing to their fellow trade unionists the country over.

With that famous saying of Patrick Henry's "Give me liberty or give me death," as their watchword, these men are determined to fight and fight as only American workingmen know how to fight when they are oppressed by the 2939 slave driving employer. These men will continue to go on and on until their efforts are crowned with victory; until they receive the wages and are given conditions of employment which other union coal miners of this country enjoy. At no time since the inauguration of the strike have the men been so determined and at no time have they been so confident of success. They are going to continue the strike indefinfiitely, and they say that the fight has just begun. One of the many notable features of this strike is the fact that of over the twenty thousand men that came on strike not one of them have returned to work, although the companies have offered some men good jobs and sums of money if they would only betray their fellow men and go to work. The coal operators are circulating stories through their newspapers that they do not know why the men are out on strike. They set forth the claim that there were no grievance that they knew of and they treat their men better than other operators. But, my friends, go into West Morland county and see the awful condition and watch the miners prohibited from going to the United States postoffice to get their mail. This is the place where men, women and children have to secure a pass from

the guards before they are allowed to leave the place. They can't even go to church until they have secured one of these passes. They read, "Allow Mike Kousic to go to church" (Signed) Brown, Supt. What do you think of this in free America. This place is known as the Siberia of America.

The Jamison Coal Company evicted the miners from their homes and then went into court and secured an injunction preventing the United Mine Workers from furnishing tents for the evicted strikers to live in. These are the mines
2940 where Edward Soppett, a former organizer for the United Mine Workers, is general Superintendent. He was a failure as an organizer, but surely Soppett is a howling success as a slave driver.

Although the conditions are bad at Jamison, the same conditions prevail at many other places in Westmorland county, where the coal companies have become so desperate as to drive men to work at the point of a gun.

The worst feature of the strike is the fact that nine of our people have been murdered by the campanies' thugs and it looks as though the court is giving these murderers special privileges. Among those killed were three women, wives of our striking miners, who were shot down like dogs by the drunken hirelings of the coal operators.

The operators are shipping men from Cleveland, New York and Chicago, where they have employment agencies established at these points. The men are deceived by the people who are in charge of the agencies, and when they find out the true state of affairs they refuse to work. Very few of these men are coal miners, most of them being tramps, and at best they are only a bill of expense to the companies. Of course, as in nearly every strike that workingmen are engaged in, the courts are being used as a mere cat's paw and do just what the operators ask them to do in order that the worker may be defeated. Every injunction that has been asked for by the coal operators has been granted by the courts, and these injunctions do everything but restrain a man from breathing, and we expect them to do this if they can devise a way of cutting off the fresh air from the strikers.

The policy of our organization has been that our people shall obey the law, but shall exercise all the rights guar-
2941 anteed them under the constitution of the United States. As a result of this policy the injunctions have not interfered with the successful conducting of the strike. I believe this policy is the best that can be adopted during a

strike, for just as soon as the courts learn that their injunctions are not doing the work they were intended for they will stop issuing them. This policy will continue in Westmorland county even through one half the coal miners in that field are thrown into jail for contempt of court. It is better that they be in jail than to be scared into doing something unlawful and wrong just because a judge tells them to do it.

There is no doubt that the Manufacturers' Association is behind this fight in the Irwin field, and as a result the battle will be long drawn out and should receive the united support of every organized workingman in the country. Westmorland county is becoming another Colorado. Women with babies on their arms are being thrown into jail; young girls are arrested and thrown into jail by the deputies simply because they are daughters of the strikers. The sheriff has issued orders to his men to shoot to kill, after a mixup that was caused by a drunken guard at Export last week. The sheriff sent out his deputies and gave them orders to arrest every person they saw upon the public highway, and as a result of this eleven women were arrested and taken to Greensburg and thrust into jail. The next morning they were all discharged and the company had to pay all costs.

These many things are simply causing the men to remain more firm than ever. It simply acts as a spur to cause them to go ahead. The coal companies have done their worst and they now realize that they are up against a fight that 2942 means better conditions for the coal miners. They may evict the miners from their homes, they may murder them as they have been doing, but when the smoke of battle is cleared away, slavery will be abolished and unionism will be established in Westmorland county, never to be stamped out."

(From United Mine Workers Journal July 7, 1910, page 4)

"A dearth of news from the Irwin field, except the communication from Vice President Van Bittner, leaves us unable to speak of the situation in that field, except the miners are still standing firm and determined to win."

(From the United Mine Workers Journal August 4, 1910, page 3)

" News From The Irwin Field

Finleyville, Pa. July, 25, 1910.

" Editor Mine Workers' Journal:

"The issue of the 21st inst, was certainly full of good things, and any union coal miner who neglects to subscribe for and read the Journal is, in my mind, a very poorly informed union man and his unionism is very shallow. Indeed, a union man who refuses or neglects to support the paper that represents his craft does not understand or appreciate the far reaching ideals and principles of the trade union.

I see a novel scheme has been introduced into the Irwin district to enlist the services of the clergy to do something for those true and loyal souls who are on strike there. They certainly need intelligent help and influence, and certain it is that there is a proper channel to pursue in order to reach the sympathy and reason of the preachers. These men have much influence, but will they be stirred to such a depth as to use it? We will wait and see. But a few words about the method adopted in that strike. A deficit of over $1,600 for the last quarter placed against the Journal is a standing disgrace to the union men of America, and they ought to blush for shame to be told that such a condition exists. There are a large number of men who call themselves union men because they are compelled to pay dues. That is where their unionism commences and ends. That is the sum total of their unionism, and if their dues were not checked off in the company office they would not pay them and their unionism would not make a shadow.

2943

A prayer was read by Mr. F. Feehan at a mass meeting at Madison and is being read by other men at other places in the strike zone. I have this to say about praying: Your prayers may get you to heaven—although I doubt it sincerely—but they will never win the strike in the Irwin field. Your prayer was an appeal to the clergy. They have responded in "prayin", but will it appeal to the coal barons, the tyrants, the persecutors, the oppressors, the murderers and assassins? No, my friends, your prayer will not bring those lawless and brutal men to time or reason. There may be a time for prayer, but men of Irwin believe that time is not now.

That time is past and gone. The trouble is, the majority of you have prayed too often and too long, until that business is useless. Rather, this is a time to fight; to deliver the hardest and swiftest blows possible; hit wherever you can, above the belt if you can, below the belt if you must. By all means

mix your "prayin" with hard fighting and if you must neglect either, stick to the fight. The miners over in Nova Scotia fought and struck for a year—and many hundreds of them are striking yet. They used all fair and lawful means to win, and hundreds of them have won, but it was not won by "prayin", but by sacrifice and fighting. But I don't blame the men for praying provided it will bring intelligent action to
2944 their aid. It must ever be remembered that God is always on the side of the biggest and best drilled army, especially if they shoot straight and keep their powder dry, and, by the way, we working folks are not so dumb and simple minded as we were taught we ought to be many years ago, as it was neither God nor the prayers of Godly people that won out the wars of 1776 and 1865. Oh, no, it was numbers, bullets and shells, courage sacrifice, shooting straight and often. Oh yes, that's it, boys, keep up enthusiasm, send plenty live agitators into the strike field, hold meetings often, tax all miners working in Pennsylvania so much each pay day, keep the stomachs of the men, women and children from want, and send cast off clothing into the field.

If the above is carried out to the letter I'll guarantee the strike will be won (prayer or no prayer), and instead of asking the Lord to forgive those notorious thugs, murderers, assassins and gun men, judges, sheriffs and other state and county authorities, I would, if I did pray at all, ask the Lord to damn and exterminate such despotic tyrants from the face of the earth. However, I am not going to start praying for such purpose because praying is no good anyhow. That is all false, fake and ridiculous. And lastly, do not ask God or anybody else to do for you that which you can do for yourself. Remember these judges and sheriffs are not Gods. They hold their position because of the dense ignorance of the workingmen of West Moreland county. Use your ballot hereafter as you strike; turn out of office all unfair and rotten officials, whether they are judges or sheriffs. Put not the friends of the working class in office and legislature, but put labor
2945 and true sons of toil there. They have the education, intelligence and ability. So quit praying, fight hard and vote right, is the wish of yours.

(From the United Mine Workers Journal August 11, 1910, page 1)

" Miner Shot Dead in Strike Riot at Export

"A desperate hand to hand battle last night between the authorities and strike sympathizers at Export coal mines,

near here, a striking miner was shot and killed and State Policeman George Davis of Troop B, Wilkes-Barre was seriously injured.

Nearly a score of others were injured and the situation is grave."

2946 Mr. Drinker: We offer from the United Mine Workers Journal for the year 1913 and 1914, the following articles relating to the strike in Vancouver. These are offered for the same purpose.

Mr. Warrum: The defendants separately renew their objection.

The Court: Objection sustained.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

(Which said articles, so offered in evidence and excluded by the court, are respectively in the words and figures following, to-wit:)

From the United Mine Workers Journal, issue of October 30, 1913, page 7:

Thirty Miners Sentenced

Vancouver, B. C. Oct. 23.

"Sentences ranging from two years' imprisonment to three months' imprisonment and $50 fine were pronounced today on more than thirty men, members of the Miners' Union of Nanaimo, B. C., and sympathizers found guilty of rioting in connection with recent labor disturbances at Ladysmith Extension South Wellington and Nanaimo.

The men are: Paul Deconinck, Samuel Guthrie, John Morgan, William Simpson (Jr., and J. J. Taylor, two years in the penitentiary, to date from the time of their arrest, John Alsopp, J. H. Armstrong, Charles Axelson, William Bauld, George Bombera, Sam Brightman, James Colley, Robert Cossar, Peter Galuska, H. H. Langdon, Duncan McKensie,
John McKenzie, Joseph Mairs, Jr., James Marshall,
2947 Charles Mortimer, Steve Mrus, Steve Puyanch, George Porteray, William Stackhouse, Martin Slogar, Jas. Wallace, Robert Walkinshaw and Charles Yoga, one year's imprisonment with a fine of $100, and in default four months more, to date from time of arrest; Henry Dyer, John Fisher, Earnest James, Alvar Kotila, Richard Morgan, Sr., William Patterson, William Sterling, John Scott, Henry Taylor,

Richard Whisker and Edward Williams, three months' imprisonment and fine of $50, in default of which two months more, to date from time of arrest.

It seems to be the consensus of opinion that the penalties imposed are unwarranted by the offense, unprecedented in severity and are the height of judicial viciousness."

(From United Mine Workers Journal Jany. 8, 1914, page 1)

Our Strike in British Columbia

Our Brothers are Standing Firm (By Geo. Pettigrew)

Vancouver Island, Dec. 29

"The situation on the island remains unchanged in the various camps. In Cumberland the Chinese employed are practically the only men the company can depend on. The few whites they have are not satisfactory to them, this being proved by them working a few days and then leaving. In Nanaimo the company has made an attempt to scab the miners, but are doing nothing. A convention of the district was held last week, when over forty delegates were in attendance. The situation was reported on from all the delegates, looking at it from its darkest and brightest sides, and also to devise some ways and means for a satisfactory settlement. At the conclusion many important resolutions were passed and it is hoped may have some effect on the strike. The delegates ended their deliberations convinced that the situation looked as good now as at any time during the strike and ex-
2948 pressed their sorrow that our brothers on the other side had needed to send financial support for so long a time, but are firmly convinced if the United Mine Workers stand behind them for a short time longer they will without doubt end the fight with an agreement equally as satisfactory as that signed up with the Vancouver Nanaimo Coal Company. There is at present more division among the coal companies than the men.

Less than one hundred men have left the ranks of the union during the whole period of the strike, which to the rank and file of the members of the U. M. W. of A. should show the splendid fighting spirit of the men and women here.

The trials of the man in prison are progressing slowly and three weeks ago Ladysmith had fourteen men tried by jury and ended in the acquittal of three and conviction of eleven in unlawful assembly and riot. The South Wellington trials ended in three convictions and seven acquittals. Even though

these men have been found guilty, they are being held without sentence.

Two days ago application was made for bail for the few men who had laid so long without trial and ended in all but two getting out on bail from $5,000 to $10,000, with the exception of Brother Aryelo and another, and the reason given for refusal was that they were American citizens, with their families on the other side. However, a statement was made that their trials would begin when the court opened after holidays.

When the readers of the Journal know our men have had to lie in prison for three, four and five months and then end in no conviction and that the coal companies can have the full support of the Government in having the camps filled with the scum of America in the form of special police and mili-
2949 tia, some of these men having already been convicted of charges giving them six months' imprisonment, and all the assistance they have cannot let them successfully scab the miner. We are convinced the end is near, and satisfactory at that."

(From United Mine Workers Journal January 22, 1914 Page 3 Col 2)

Vancouver Strike.

"The failure of the coal operators on Vancouver Island to in any way treat with the United Mine Workers, and their hostile attitude towards the establishment of the Union there, have led to a very serious industrial conflict in which all the mine workers on the island are involved, and which has required the expenditures of a vast sum of money.

To all intents and purposes the operators have been aided materially by the government of the Dominion of Canada in their fight against the United Mine Workers.

The powerful interests there have resolved to prevent the establishment of our Union and have endeavored to operate their mines with non union labor, without success.

A number of our men were arrested and sentenced to long terms in prison without any recourse from these arbitrary tribunals. I am reliably informed by those in charge there that it is the worst form of persecution, with no semblance of justice whatever; but the men are remaining loyal to the organization.

International Board Member Farrington has had charge of the strike and has done everything in his power to bring about

a conference, but at the time of compiling this report his efforts in this direction have been without results.

(United Mine Workers Journal March 26, 1914 Page 1 Col 6.)

U. M. W. Organizer Sentenced.

Vancouver, B. C. March 23.

,"Joseph Angelo, international organizer for the United Mine workers of America was sentenced today to four years' imprisonment for his part in the nanaimo coal strike riots of last August."

2950 (From United Mine Workers Journal April 9, 1914 Page 1 Col 4)

Vancouver Island

Strikers Stand Firm, Tho' Persecuted.

Victory in Sight.

"The court cases arising from the socalled rioting during the third week of August last year are now finished. At that time over two hundred men were put in prison. The men were all remitted from the lower to the higher courts, and in the earlier stages were advised to take a speedy rather than a jury trial.

The first group of men to be tried were from Ladysmith and had been led to believe that some understanding existed between the crown and defense lawyers, and were advised on this understanding to plead guilty, expecting the time they had served would serve as punishment. However, on the day they came up for sentence some got two years, some sixteen months and others eight months.

When this was found out the defense lawyers demanded a jury trial and again the men had to lie in prison awaiting all the red tape necessary for the change, bail, in the meantime, being denied. They laid for three months before getting bail, and then only through the agitation going the country.

When the jury trials came, first they were tried in groups, thus allowing the defense lawyers more challenges as to jurors and giving a chance to select a fair minded jury. The first few cases tried in groups were acquitted on the ground that there was not sufficient evidence to convict. The crown lawyers then decided to change the method of trial and bring each individual before the court; this change gave the defense

lawyers only four challenges as to the jurors. The re-
2951 sult was that the crown always had a jury to be depended upon.

In each case after this method was adopted a conviction was made and in the meantime the men found guilty had to lie without sentence.

The government evidently found the trials too long and expensive and two weeks ago made a proposition that if the remainder of the fifty two men would plead guilty to a charge of unlawful assembly they would drop all other charges completely and give an understanding to recommend to the court leniency for the men awaiting sentence. The men were at at first afraid of this, remembering what had happened in the beginning.

However, in the end they decided to adopt this course, and as a result over seventy were either allowed to go free or given suspended sentences. However I am sorry to say that nine of our Nanaimo men got one year in jail, two six months, and Brother Angelo, from Bridgeport, Ohio, who is employed by the organization as national organizer, and who had done good work here among his own (Italian speaking) people, got a sentence of four years. It is well known to the men on the Island, and they desire the men in the organization to know, that this sentence was not given for any property damaged but because he was a leader in the strike.

We here are not sorry all those cases are over, as it has been an anxious time for all the men concerned and their relatives, and during the trying period one young man from Ladysmith who got a one year term died in prison under painful circumstances, another is lying in the hospital in a dying condition and more than one child has either been still-born or had premature deaths from the strain of conditions and many more have been ruined for life.

2952 The government of British Columbia and Canada have much to face in the future which they cannot bear, this when a spirit of decency and fair play in the beginning could have prevented the strike and all its consequences. From appearances it now looks as if the government is tired of more than the trial cases; they are also tired of the strike. The situation looks as good if not better than it ever did and the determination of the men on the island, together with the many persecutions they have had and successfully borne have proved that the United Mine Workers have come to stay for-

ever. The men here realize the splendid efforts their brothers on the American side have made to keep them in food during their struggle and are convinced they in return will show the same spirit when this fight is won, as "win" is the undoubted end of this struggle, and this struggle means the establishment of the organization on the Canadian side.

GEO. PETTIGREW."

BALLARD S. CARNEY, called as a witness in behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Where do you live?

A. I live at Sharon, West Virginia.

Q. Where did you live in 1912 and 1913?

A. I lived at a little town known then as Muckalo, on Paint Creek, West Virginia.

Q. There was a strike of the United Mine Workers in
2953 those years at that place? A. Yes, sir.

Mr. Warrum: Now, if the court please, the defendants renew their objection to this testimony because it is immaterial as to whether there was a strike there or not, and because it is a collateral matter, and going into it will require the defendants to produce witnesses and extend the trial indefinitely, and show exactly what the causes were there and the conditions that prevailed, and why the strike occurred in the Cabin Creek district.

The Court: Objection sustained.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Mr. Carney, were you personally familiar with the events of that strike on Cabin and Paint Creek?

A. Yes, sir.

Mr. Warrum: We object because it is immaterial as to whether he is familiar with these facts or not; his familiarity would not permit him to testify, and we object because it is a collateral matter.

The Court: The court being of the opinion that this matter is purely collateral, the objection is sustained.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

2954 Q. Were you the president of a local union and a member of—don't answer any of these questions, without his Honor permits it. Do you understand? A. Yes, sir.

Q. Were you a president of a local union of the United Mine Workers in that district at that time?

Mr. Warrum: The defendants renew their objection.

The Court: Objection sustained.

To which ruling and action of the court the plaintiffs, and each of them at the time duly excepted and still except.

Q. Did you personally conduct, on behalf of the striking miners, the campaign against the operators in your particular district?

Mr. Warrum: Objection renewed.

The Court: Objection sustained.

To which action and ruling of the court the plaintiffs, and each of them at the time duly excepted and still except.

Q. Did you participate in the attacks on the coal operators as the leader of your local union and the surrounding locals in connection with that strike?

Mr. Warrum: Objection renewed.

The Court: Objection sustained.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

Q. Did Mother Jones live in your house during that strike, after she was arrested?

Mr. Warrum: The same objection.

The Court: Sustained.

2955 To which ruling and action of the court the plaintiffs and each of them then and there at the time duly excepted and still except.

Q. Did you assist Mother Jones in circulating these reports of the atrocities practiced on her by the company thugs and gun men at the time she was living in your house?

Mr. Warrum: The same objection and the further objection, if the court please, that these questions are not of the

character and form of question intended to lay the foundation for counsel's offer. They are leading and suggestive, and are intended by their character to introduce into the proceedings an element that has no business here.

The Court: Objection sustained.

To which ruling and action of the court the plaintiffs and each of them then and there at the time duly excepted and still except.

Q. Did you know of the methods used by the United Mine Workers, did you know of your own personal knowledge, the methods used by the United Mine Workers during that strike to obtain publicity for their side of the case?

Mr. Warrum: The same objection.

The Court: Sustained.

To which ruling and action of the court the plaintiffs and each of them then and there at the time duly excepted and still except.

Q. Did you, yourself, have part in the circulation of such publicity?

2956 Mr. Warrum: The same objection.

The Court: Sustained.

To which ruling and action of the court the plaintiffs and each of them then and there at the time duly excepted and still except.

Q. Did you take the articles to the Labor Artist?

Mr. Warrum: The same objection.

The Court: Sustained.

To which ruling and action of the court the plaintiffs and each of them then and there at the time duly excepted and still except.

Q. What is the newspaper called the Labor Artist, and what part did it play in the propaganda connected with that strike?

Mr. Warrum: The same objection.

The Court: We have had none of the articles from that paper in this trial, have we?

Mr. Drinker: No, your Honor.

The Court: Sustained.

To which ruling and action of the court the plaintiffs and each of them then and there at the time duly excepted and still except.

Mr. Drinker: I will say frankly, your Honor, that none of the testimony that I am considering now and will consider will relate specifically to this Arkansas trouble.

The Court: Very well. I didn't want anybody to raise that question afterwards.

Mr. Drinker: I will further promise that I will never
2957 take that position at any other stage of this proceeding.

The Court: I don't think you would, but somebody else might.

Mr. Drinker: I cannot guarantee that I will not be discharged.

The Court: I hope you will not. Proceed.

Q. Mr. Carney, did you participate on efforts to prevent the non-union miners from working in the mines in Paint and Cabin Creeks at this time?

Mr. Warrum: The same objection.

The Court: Sustained.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

The Court: Haven't you laid all the foundation that will be necessary? If the ruling of the court is erroneous you have the question saved, beyond a doubt.

Mr. Drinker: I think I have. That will do, Mr. Carney.

(Witness excused).

Mr. Drinker: I want to make an offer in connection with the testimony of this witness. I offer to prove by the testimony of this witness and other competent witnesses that the facts disclosed by the testimony of the witness in answer to the question suggested would on their face be of such a nature as to result in the inevitable conclusion that the strike there conducted was part of a fixed purpose and set design, by agreed upon methods, for the suppression by the United Mine Workers, in combination with all its districts and members and lo-

cal unions, to prevent non-union coal from being ship-
2958 ped to other states in competition with that mined by union operators in those other states, for the purpose of increasing the cost of production in the non-union mines, and for the purpose of protecting the union operators and the relations between the mine workers and the union operators in such other states.

Mr. Warrum: Objection renewed.

The Court: On the same ground, the offer is denied. This would be likely opinion evidence.

Mr. Drinker: I cannot accede to your Honor's conclusion as to what the evidence would be as to whether it would be opinion evidence or not. It would be a statement of facts, your Honor.

The Court: Very well. Proceed.

2959 Mr. Drinker: Now, if your Honor please, I offer from the United Mine Workers Journal the editorial contained in the issue of November 7, 1912, page 4, for the purpose of showing the West Virginia strike in 1912 and 1913 was authorized and conducted by the National organization.

Mr. Warrum: The defendants object to the offer because it involves a collateral matter.

The Court: Objection sustained.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

(Which said article, so offered in evidence, and excluded by the court, is in words and figures following, to-wit):

"The men on strike deserve to win, are determined to win. The International organization is supporting them to the extent of its resources, the membership everywhere is backing up the officials.

"What's the answer?

"Victory."

2960 Mr. Drinker: I offer in evidence the following articles from the United Mine Workers Journal, for the years 1912 and 1913 for the purpose of proving the facts sought to be proved by the questions to the witness just on the stand; and for the further purpose of proving that the strike in West Virginia in 1912 and 1913 was planned and conducted by the National organization of the United Mine Workers in con-

spiracy with the members of that organization and its district branches and local branches for the purpose of preventing the shipment in Interstate Commerce of coal mined in non-union and open shop mines in West Virginia and so that such coal might not come in competition with the coal mined by union operators in Ohio, Pennsylvania, Indiana and other states than West Virginia, for the purpose of increasing the cost of production of the West Virginia non-union or open shop operators, in order to interfere with such shipments; for the further purpose of showing a thoroughly conceived system of camouflaging the public as to the true purpose of such events, and in order to keep public opinion on the side of the mine workers; for the purpose of showing in connection with the testimony of the witness just on the stand a deliberate circulation by the United Mine Workers of description of events known to be false, circulated for the purpose of deceiving the public and the authorities in connection with those events; for the further purpose of showing, by the publication by United Mine Workers International Executive Boards of these known false statements, and a deliberate incitement to the district organizations throughout the country to stop, by all necessary methods, legal or illegal, the
2961 shipment of non-union or open shop coal in interstate commerce, wherever such was necessary to carry out the prime purpose of the organization to unionize every non-union mine in the country, regardless of methods or cost.

Mr. Warrum: I think an offer of that kind is manifestly unfair in its character and composition. Defendants separately object to the introduction of these various articles for the reasons heretofore given. I suppose a list of those articles will be handed to us.

The Court: Furnish counsel and the stenographer with a list of the articles.

Mr. Drinker: I will do so, your Honor.

The Court: The objection will be sustained.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

(Said articles from the Mine Workers Journal, so offered in evidence, and excluded by the court, are, respectively, in words and figures following, to-wit):

(From the United Mine Workers Journal, issue of August 1, 1912—page 1):

"Terror Reigns in West Virginia."

Charleston, W. Va., July 27.

Three companies of state militia from Mount Gretna, Pa., arrived by special train shortly before noon today and marched on the Paint Creek mining section, where a dozen men are reported to have been killed in fighting between
2962 Baldwin detectives and striking coal miners. No complete fatality returns were available today, but a mining official fresh from the scene of the trouble replied to questions:

"Hell has broken loose. We hope the soldiers will put a stop to it."

The official refused to discuss the situation further.

The private guards of the mining companies are believed to have instituted the bull pen and other repressive measures.

The known dead are William Stringer and Gus Pinson, private guards, William Phaup, chief of the Baldwin detectives, is at Sheltering Arms hospital with bullet wounds in both arms. He will recover. The miners' losses in yesterday's fighting around Mucklow are not known. Adjutant-General Elliott and twenty-five men of company C are encamped near Mucklow, but the territory is too big for them.

For a distance of twelve miles around the mouth of Paint Creek the center of one large company's operations, the inhabitants are said to have lapsed into a state of primitive savagery, spurred on by the depredations of the private guards. Frightful stories of attacks on defenseless women and raids on homes reached here. That more than two men were killed on both sides was considered certain by men who came out of the troubled region today. They said the back woodsmen had joined with the strikers in the war upon the private guards. Every ravine affords ground for a deadly ambush. The militiamen unfamiliar with the ground and unaccustomed to the guerilla warfare of the backwoodsmen cannot hope to cope with the situation except in large
2963 numbers.

Six hundred miners and hillsmen fought against several hundred private guards in the engagement near Mucklow yesterday. Over 3,000 rounds were fired. The miners are desperate, and their attack centered on the company's stores. Their outcome of the fighting is not known in Charleston. Communication with the Paint Creek section is possibly only

by foot, all wires being down. Travelers into the interior take their lives in their hands.

That the fighting was renewed today was considered certain. The frantic call for state troops made by the mine owners was interpreted here as meaning that the miners more than held their own in previous engagements, and that the lives and property of the company officials were threatened."

(From the United Mine Workers Journal, issue of August 8, 1912, page 1.)

"Bloody War in West Virginia".

(G. H. Edmunds.)

It has been quite a while since I wrote to the Journal about the strike in the Kanawha fields of West Virginia.

We have been so very busy that no time could be found for correspondence. At this writing the strike is in its most critical period. In my second letter to the Journal last May I pointed out the guard system and how it was being inaugurated in the Paint Creek zone. We also called the attention of the sheriff and the Governor to the dangers of tolerating the guard system in those fields. Now, no one will de-
2964 ny that we were correct in our deductions. Even the Governor has come around to our way of thinking. I have been away on business for the organization for 12 days, so I can only give such a report of the recent shooting on the creek as has come to me from the press and general public. What I can glean is that the miners, after an honest effort to avoid trouble, after vainly appealing to the sheriff of Kanawha county and to the Governor repeatedly, and repeatedly being refused protection from the armed guards, who were committing all manner of outrageous depredations against the strikers, their wives and children without the vestigate of an excuse, also from unlawfully evicting the people from their homes; after appealing to the courts and judges running away to keep from hearing their cases; after being unable to get murderous guards to trial, and after every conceivable dirty trick had been played against the miners imaginable, they finally decided to protect themselves.

They seem to have adopted the tactics of the revolutionary fathers of American freedom No details are known. The results are also in doubt. Suffice it to say that a battle occurred on Paint Creek the 25th of July, 1912, long to be remembered by the guards of that creek. Some say 35 were killed, some say 18 were killed and 35 wounded. As stated

in the outset, we do not know which is correct, but we do know that it was hell on Paint Creek that night and day.

The citizens have at last awakened to the actual condition on Paint Creek. When the miners were being assaulted and murdered by the guards, and when they appealed to the
2965 Governor for protection, he said he could do nothing for them; but just as soon as Guard Phopp was shot and Springer was killed the Governor sent the soldiers from the national encampment at Gretna, Pa., to the scene of the trouble on Paint Creek. (Puzzle: Why does the Governor protect the guards and won't protect miners?) Is that the doctrine of the boss bull mooser of West Virginia?

If so, please save us from the bull moose party in the beginning.

The soldiers are on the creek, but the guards are running things up that way at this writing. It seems that the soldiers are simply helping the guards; or, in other words, are standing guard over the guard system and are not controlling the situation, as it was thought they would do upon their arrival. The miners have no quarrel with the militia, or the guards either if they (the guards) will mind they own affairs and not molest the strikers in their legal rights. But I will again predict that unless the guards behave themselves, they will have a hot time on Paint Creek. All of the miners in the Kanawha valley are aroused as never before over this strike, and if it has come to the place where they are driven to the rifle, they will certainly use it to perfection.

On the other hand, if the guards are removed I believe all trouble will cease. But the miners are not going to stand for their wives, children and officers being mistreated and even killed and then have no legal recourse. It has been proven in this strike that the workingman has no rights that
2966 any one need respect.

Take, for instance, Justice Crawford, who has been found guilty of assaulting a helpless woman and sentence has been passed on him, yet he is allowed to exercise the function of a justice of the peace in Kanawha county. He still tries and sentences the miners.

Cannot the County of Kanawha get along without Crawford? Or is there a law that allows a convicted official to exercise the functions of his office? If that is the case, then

I say, shame on the state of West Virginia for having such a law upon its statute books. The Cincinnati Enquirer of the 31st of August had an article wherein the striking miners were accused of firing on the soldiers, but it is not true. If the soldiers were fired upon, it was not done by the miners; but we have every reason to believe that it was the guards who fired on the soldiers, and if the Governor will remove the guards (which he can do), there will be no more firing in that territory. Will the Governor do it? In the interest of the public peace, will he do it?

More than a thousand miners voluntarily came to Charleston to see his Honorable Excellency, the Governor, but they found that that worthy was away supposedly at Huntington. Mother Jones and John Brown, who is a candidate for the Legislature on the Socialist ticket, addressed the mass-meeting of miners.

The today's Mail published an article that the sheriff had written a letter to the adjutant-general asking him to declare martial law in the strike zone.

2967 Times are still hot up the creek.

(From the United Mine Workers Journal, issue of August 15, 1912, page 3):

"3,000 More Go Out on Strike.

Charlestown, W. Va. Aug. 10.—Still more serious became the strike situation in the Kanawha valley today when 3,000 coal miners employed in the non-union mines on Cabin creek laid down their picks, making the total number of striking miners on the Kanawha coal fields above the 5,000 mark. In the Cabin creek field the miners walked out without making demands upon the coal operators, asserting that they would refuse to longer work under the conditions existing on that creek, but they are excepted to insist upon the employers' recognition of the union mine workers' organization, the same demand made by the striking miners on Paint creek, and the removal of the mine guards. In addition to the general strike on Paint creek, which has been in progress since last April, and the present condition of the strike to the miners on Cabin creek, 1,400 miners are idle at Boomer, Fayette county, in close proximity to the strike scene. The miners at Boomer walked out Friday because of the refusal of the mine owners to meet their demands in connection with the semi-monthly pay day. The strike at Boomer is regarded as a local

affair and it is asserted that the miners quit work in violation of their wage agreement with the mine owners.

Officials of the miners organization have been insistent that the strikers return to work, but to the present time they
2968 have failed to heed the instructions of their leaders. A meeting will be held at Boomer on Sunday and it is possible that the charter of the Boomer local will be revoked unless the men return to work.

While there has been no disturbance in the strike territory today following the strike of the Cabin creek miners, the situation is the cause of much alarm. Every company of the state's national guards has been employed in the Paint creek valley to prevent a recurrence of the riots between the armed miners and the Baldwin guards employed by the coal companies, but if there is a clash on Cabin creek the same forces, and it is deemed probable, the guardmen will have to be divided. It is recognized by the militia officers that the miners on Cabin creek are as well armed as are the miners in the Paint creek section and they are just as bitter in condemning the guard system. Local stores reported the sale of many rifles to visiting miners today.

"Mother" Jones, one of the strike leaders, who initiated the strike movement on Cabin creek, when she spoke to 800 miners at Eskdale on Thursday, stated today that the guards on Cabin creek had assaulted a score of the miners since yesterday morning. She further said that the national organization of mine workers would be compelled to care for the 3,000 or 4,000 striking miners and their families from the Cabin creek section. The mines on Cabin creek have been operated on the open shop plan since 1904, when the miners' union in that fall was destroyed. Since that year no effort has
2969 been made to organize the miners on that creek, but the coal operators in the adjoining organized field have complained bitterly against being forced by the miners to compete in the markets with coal produced by the non-union labor on Cabin creek.

The strike on Cabin creek was a severe disappointment to Governor Glasscock, who had been making an effort to bring together the contending forces on Paint creek. The action of the Cabin creek miners further complicates a situation that appeared almost ready for solution.

The two companies of the national guard which were stationed at Peytonia and Sterling, Boone county, where an agreement was reached between the miners and operators,

were ordered home this morning. But the order may be rescinded at any moment. These two companies were on duty for more than two weeks."

(From the United Mine Workers Journal, issue of October 24, 1912, page 1):

(By G. H. Edmunds.)

"Standing Like a Stone Wall."

Martial law was kept on until the coal operators evicted the strike leaders from their homes, and then it was declared off. The "army" officers are very busy denying that the militia took part in the eviction of the strikers, but every one knows better. Tents have arrived from Cincinnati and a box car load of large, new tents are en route from Clearfield, Pa. The union has closed a deal with a lumber company for the quick delivery of several hundred thousand feet of lumber,
2970 and houses will be built to shelter the women and children, while the men live in tents.

Strenuous efforts are being made by the companies to fill their mines with scabs, but the union has been very successful in keeping the number down below the danger point, where there were 1,500 men working before the strike, there is less than three hundred working now.

The strikers are determined to win out if it takes ten years. We ask all mine workers and sympathizers to advise people to stay away from here. It is reported that the governor has pardoned the thirty-five men from Dorothy, who were sentenced to sixty days in jail for asking other men not to work in the mine while the strike was on.

No better example can be given of the soul of a coal baron than that of the case of Albert Woods, a colored miner who lived on Mr. Cable's works on Cabin Creek. His father-in-law, an old man, ninety-five years of age, forty-eight years of the ninety-five were spent as a slave to the Cable household. This old man was lying sick unto death. He depended upon his son-in-law for help and attention. Al Woods had to bathe the old man daily and administer to his wants. Mr. Cable tried to drive Woods back to the mines, and upon his refusal to go, he was out in the road, bag and baggage. His old father-in-law was left there to suffer and die, which he did in a few days after, and after death Woods had to go to the governor before he was allowed to go to the funeral. Isn't it horrid to think of such things as this?

2971 But the worst part of this sad story is the wife of Woods is expected to become a mother in a very short time. Such is the soul of a coal baron. Old man Isaacs gave free gratis forty-eight years of his life to Mr. Cable, but yet he is not satisfied—the despoils the old man's daughter.

Yet this same man is the builder of Y. M. C. A.'s and a "Christian" man, and a rock-ribbed, died-in-the-wool Republican. Now, striking miners, don't budge an inch until after November 5. We must rid this country of these political parasites, so stick to your oears; we are bound to win because we are right."

(From the United Mine Workers Journal, issue of October 31, 1912, page 1):

"The Guard System in Disguise.

"Militiamen to do Private Guard Duty.—

The strike of the miners is reaching it most critical state. So far every movement of the operators has proven a boomerang. The Baldwin guards pushed the miners beyond their power of endurance and forced them to rise in their might and put the guard system out of business in Kanawha county. When the Baldwin guards were no longer able to control the situation, the militia under the governor's "peace proclamation" were brought in to protect the Baldwin while they built forts and fortifications. When this method failed the governor declared martial law, and though biased and one-sided, it failed to break the ranks of the striking miners. Legalized anarchy and brutality has failed, military despotism has failed and now the powers that be realize that they must resort to other methods to accomplish their object. The
2972 military authorities abused their authority and evicted the miners from their homes, thinking by this method they would discourage the strikers and force them to go back into the mines, but their actions only added fuel to fire and fanned the already smouldering spark of revolt into a flame as unquenchable as death. The miners in this district will never submit to the brutalities of the guard system again, the tax payers of the state are tired of paying the state militia $5,000 a day to do guard duty for the coal barons. The military despotism, supported by the tax payers, was becoming as unpopular and obnoxious as the guard system, so something else had to be done. General Elliott, the coal barons and the governor have again met in private consultation and hatched up another beautiful little scheme. Every move the governor

has yet made was the result of one of these secret council meetings with the operators and their attorneys. The latest move to break the strike is to use the militia as private watchmen for the operators to be armed and organized under some of the militia officers. These so-called watchmen will be nothing more nor less than a Baldwin detective agency in disguise, as it will be composed of the renegade members of the militia who have stooped so low as to hire to the Baldwin strike-breaking agency. This simply means one more plot hatched in secret between the governor, the Baldwin, the county officials and the coal operators to break the present strike. Both the miners and the mine workers' organization should watch this latest move of the operators and their tools. The crisis has been reached and the militia in
2973 plain clothes is the last card the masters have to play, trump this play and the strike is won. The miners cannot expect soldiers in plain clothes under pay and instructions from the coal operators to be any fairer to their side of the controversy than were the Baldwin thugs, whose places they are taking. Free speech and the right of assemblage is promised, but the miners have learned from past experience that the promises coming from such a source cannot be trusted. Such determination as has been displayed by the miners on Paint creek and Cabin creek will win the victory. The output of coal in the strike zone does not amount to the average run of one mine, the transportation men being brought in are green men and are costing the operators much more than they are making out of their work, and at this time it is impossible for the coal companies to find men enough to work their mines. What few men they are able to deceive into this section only work a few days before they become acquainted with the situation and leave. A move may be on foot, and we learn that it is, to bribe or buy some of the men to betray their fellow workers. A man who will betray his class in a fight like this is a foul traitor and should be dealt with without mercy. The miners have this strike won, all they have got to do is to stay with it, and we feel confident they are going to do that.—Labor Argus."

(From the United Mine Workers Journal, issue of December 26, 1912, page 1, column 3):

"Mother" Jones, who is the central figure in this struggle, has been holding meetings the past two weeks in New
2974 York, Cleveland and Cincinnati, and has a number of meetings billed after the holidays. She has just returned from Washington where she went in the interest of the

miners. "Mother" Jones is never idle, always planning new methods to give publicity to the strike and telling the truth about conditions here. The operators fear the truth, and if they dared to chloroform this venerable, old fighter for human rights they would consider their position more secure. The operators have gone to the subservient Governor and pleaded for him to deport "Mother" Jones, but for once the chief executive acknowledged a lack of power to serve the interests. The coal barons had better learn that it is dangerous to distort the truth through their prostituted press to make the public believe something that is not true. The truth is sometimes slow to assert itself, but sooner or later it will triumph."

(From the United Mine Workers Journal, issue of February 13, 1913, page 1):

"Our Strike in West Virginia.

"Sixteen Killed in Mine Battle; Score are Injured.

Strikers in West Virginia Fields Drive Back Company Guards, But Suffer Loss.

Charleston, W. Va., Feb. 10.

Sixteen men are dead, including twelve miners and four mine guards, after a desperate battle in Kanawha county coal fields today. Twenty or more were injured.

Five companies of state militia reached the troubled zone tonight.

2975 One of the dead, James Hendrix, a striker, was found on the mountain top overlooking Ronda, W. Va., with a bullet through his body. Hendrix held field glasses in his hand and a rifle was found by his side.

All trains of the Chesapeake & Ohio railroad into the strike territory tonight are equipped with machine guns. The gun is screwed to the rear platform of a coach as a precaution against night attacks. It is manned at all times and ready for instant use.

With the presence of militia, rioting has ceased. Rumors reached the militia late tonight that an attack would be made tomorrow and the militia prepared for it.

A critical condition exists. Exact details are not known in Charleston. However, it is hoped that with the coming of the militia disorders may stop.

Striking miners marching toward Mucklow were met in the mountains by a posse under Fred Lester, a former captain of the West Virginia National Guard, now in the employ of a coal company. A sharp engagement followed. A bookkeeper and two mine guards were shot dead and several others wounded. Lester and his men were slowly driven back, fighting all the while. Reinforcements from other mine companies, railroad police and deputy sheriffs, joined Lester's men, but with little success. The miners steadily advanced, pouring a hot fire into the ranks of the officers.

The fighting continued throughout the afternoon. The last telegraph wire into Mucklow, belonging to the Chesa-
2976 peake & Ohio railroad, was out yesterday and it was difficult to communicate with the strike district.

Guard Officer Hurt.

The guards killed are William Radcliffe, James Vance and Bernard Crockett, Fred Bobbett, bookkeeper for the Paint Creek Collieries Company, reported killed today, is still alive tonight, but has little chance for recovery. Another of the wounded is Lieutenant R. L. Taylor of the National Guard, who had been investigating conditions in the strike district. Eight strikers were captured and brought here tonight, charged with rioting.

Another company of militia was ordered to proceed from Fayettesville for Bucklow. The militia is in charge of Adjutant-General Charles D. Elliott. The members of the military court which acted during the last two periods of material law have departed for the scene."

(From the United Mine Workers Journal, issue of February 13, 1913, page 8):

"Forcing Revolt.

(By Frank Lodvinka.)

Every day marks a new leaf in the history of the West Va. miners' struggle, and in time to come the miners' strike in the Mountain State will mark the tragic pages in the great struggle between Capital and Labor. The world will then judge for itself, and pass the final verdict, and there is no question of doubt that the West Va. coal barons will be branded as the greatest tyrants of humanity in the twentieth century.

2977 Let us give the liberty loving public some proof of our assertion.

Friday, January 31, 1913, the guard bill was discussed before the Legislative committee. Mr. Knight, a famous corporation lawyer, and Mr. Sanders, a former judge (in our opinion a very poor one), represented the privileged class. Mr. Houston and Belcher represented the wage slaves of W. Va. The arguments advanced by the representatives for the privileged class, simply made the guard system in W. Va. imperative. Why? Let us analyze this question from past experience, from the workingmen's standpoint, and the answer will be this: The maintenance of the guard system is for the purpose of the operators to rule, ruin, exploit, and kill every spark of liberty. Actions of this character must be supported with Gatling and Winchester guns. The representatives for the Mine Workers logically convinced the members of the Legislature that the maintenance of guard system in W. Va. is for the sole purpose of preventing the Mine Workers from organizing and joining the United Mine Workers of America. This fact the two representatives of the privileged class did not deny.

We advised the W. Va. operators to study the world's history, and beware of repetition of history.

He who desires to rule or ruin and assume the position of Louis XVI will meet his fate.

In order to inform the general public that the actions of the W. Va. operators must be supported by guards and machine guns, here is one illustration. On January 31, 1913 one
2978 car load of strike breakers was delivered at Cabin Creek with the following fortifications: Ten guards with weapons and two Gatling guns on each end of the car. Let us ask all the operators in the U. S. A. who recognize the Organization and do business with the same, "Is this condition of affairs necessary for any employer who wants to treat his employees as human?" No! Only the W. Va. operators are forced to support their barbaric actions with machine guns, and disgrace the civilization of the 20th century.

Go on with your despotic action W. Va. Coal Barons! You will reap the full harvest of your sowing.

The organization of the United Mine Workers of America is a humanitarian institution. Whoever begins to fight the United Mine Workers of America will go down to unconditional defeat, as the motto of our organization is "One and Indissoluble."

Operators of W. Va. take notice.

Every Coal Baron who opened a fight against the United Mine Workers of America went down and out in bankruptcy.

Who is next? That is for the W. Va. Coal Barons to answer.

The strike on Cabin and Paint Creeks is in excellent condition, the striking miners are as determined as ever. Why should they be otherwise? Nearly one-half million men stand behind them."

(From the United Mine Workers Journal, issue of February 20, 1913, page 4):

Statement by Vice-President Hayes on West Virginia Situation.

The members of the miners' union in the strike field of
2979 West Virginia are in no way responsible for the anarchistic conditions existing in that state at this time. The rioting was started by hired gunmen and guards for the purpose of influencing legislation against the miners and to secure the adoption of a hill providing a state constabulary and other vicious measures now pending in the West Virginia legislature. The authorities seem more concerned about protecting the dividends of the slave-driving corporations than they do about dealing out justice to the men who produce the wealth of West Virginia. Hired sluggers and gunmen, better known as guards, have been terrorizing the miners and their families in this region for years. They employ the same method to keep out the organization as the criminals in New York employed in carrying on their nefarious work, and some of the so-called "leading families" of West Virginia are contributing to these gunmen and sluggers for the purpose of keeping the miners of West Virginia in a state of absolute slavery. We have proof that many men are kept in the mines in the strike field under armed guard and are forced at the point of a gun to work in the mines; and, moreover, several of these men who were imported to the strike field under misrepresentation have been shot and brutally assaulted in attempting to escape from their industrial taskmasters. We have many affidavits in our possession proving the correctness of this claim, and at this time we have a resolution in the U. S. Congress calling for a federal investigation of conditions in the mining fields of West Virginia, and when this investiga-
tion is made we will prove that miners have been mur-
2980 dered for protesting against their wrongs; that their wives and daughters have been brutally maltreated and

assaulted: that peonage exists, and that the constitutional guarantees of free speech and a free press do not exist in the non-union fields of West Virginia.

Our organization deplores violence as a method for adjustment of labor disputes, and we have at no time advised our people to violate the law, but it is common knowledge that the gun and the club are the chief factors non-union coal operators employ to keep the miners in a state of servitude. Such conditions sooner or later are bound to produce the anarchistic state of affairs we now see in West Virginia.

I am satisfied that Mother Jones and others who were arrested yesterday, charged with instigating the outbreak, had nothing to do with it, and that if it is possible for them to receive a fair trial they will be immediately released.

The miners on Paint and Cabin Creek are striking for the right to belong to the organization, a right guaranteed by the law of the state; the right to have checkweighmen on all tipples to see that the miner receives correct weight for his coal, another right guaranteed by the law of the state. The miner also wants the right to spend his meager earnings where he pleases instead of being forced to spend it in the company store and pay two prices for the article he buys. He also wants a living wage and humane treatment, as well as the abolition of the guard system, and it goes without saying that there will never be industrial peace in the mining fields of West Virginia until these objects are attained. We will
2981 spend every cent in our international treasury, collect a million dollars or more by assessment and tie up every non-union mine in the country, if need be, in order to redress the wrongs of the West Virginia miners, and in saying this I express, not only my own view, but the view of President White and our entire Executive Board."

(From the United Mine Workers Journal, issue of February 20, 1923, page 7):

"Rumor of War from West Virginia.

"The press has been full of scare headlines of new outbreaks, rioting and other unlawful acts, judging from these reports there must be a crisis coming. No doubt there is, judging from what we know of West Virginia. The reports, however, are not at all authentic. We have in the past three months seen reports similar to these, about the outbreak of the men on strike, how they had shot and murdered men, women

and children, shot up trains and resorted to all unlawful acts known, and when a careful investigation was made into these rumors they had proven to be false and intended to influence the public against the striking miners, and where shooting has taken place it has been proven on numerous occasions to have been the paid emissaries of the coal companies who have done the shooting, and so these late reports are not to be taken seriously; in fact, we are inclined to think they have been at their old game.

The men are determined to win this fight and are not taking any chances of resorting to any unlawfulness. We believe the miners in the Paint and Cabin Creek district of
2982 West Virginia are as fine a lot of men and law-abiding citizens as can be found in any of the coal camps of this country. Many of them are born and raised in these camps and have become used to the brutalities of the coal operator, and it is this that has been the main cause that their patience has not been exhausted before this. The operators have again made their appeal to the governor of the state for troops, but so far as we are able to learn none have been furnished as yet. The new sheriff of Kanawha county of West Virginia, where the struggle is waged, is working with the operators even to the extent of inducing men to go to the strike fields to scab, to take the bread from the mouths of hungry babes. Think of it! you who elected this man to preserve order in this county, and it is just such officers as these that are to blame for such conditions. How can such officers inspire confidence when he is openly allied with the forces that own and control West Virginia. "Protect property" is the cry; never mind the starving men, women and children, and bear in mind the word "starving." It is not used to express the condition that exists now, because there has been less starving among these families this winter than in previous years. This has been proven beyond the shadow of a doubt, and this is why the West Virginia miners will win.

Oh, my friends and brothers of the mighty army of the working class. I've seen this struggle as it is in reality the past three months. It is not a vision. Often when mingling with these strikers have I thought of and pictured in my mind what has been so ably expressed by our friend and com-
2983 rade, G. H. Lockwood, that I cannot refrain from quoting from the "Billy Goat." It applies to West Virginia in the past and present. What shall the future be?

But this moving picture show is not the real thing—it is but a sham, as it is all a sham—under the surface is the real purpose of it all, the protection, not of flag, country, or honor, but of the private property of the master class; the continuing of the system of exploitation that has reduced the working people to poverty and misery and made life one long-draw-out agony.

Across my brain there comes a vision—no sham battle this! Here on the one hand are my brethern, the toilers in the mills, mines, factories and workshops the producers of wealth. Their faces are pinched, their forms are bended with toil, their brains are dwarfed, they have had no chance, they have been beasts of burden. And with them are their wives and their children, who are also toilers, and whose forms are also bent and crippled, many without fingers on their hands and many with legs and arms missing; all with misery and degradation stamped on their features, even to the babes in their mothers' arms. And I hear a cry, a heart cry; it is low and agonized at first, but it keeps swelling and swelling until it becomes a mighty voice of protest. The worms have turned. These beasts of burden ask for justice They ask for the right to possess what their own hands have created.

I see the masters in the beautiful mansions, built by the toilers' hands. I see them arrayed in fine linen and gold. I see them sitting at their tables loaded down with the
2984 choisest foods and wines· I see them corpulent, conceited, heartless, delentless and drunken with their own success, as they call it; I see their faces blanch—the voices of the toilers has penetrated their seclusion at last; I see them in hasty conference; I see their eyes flashing angrily, their lips curling, their hands working convulsively; I see them go to the 'phone and call for the "governor." I hear the conversation—they demand protection—and they get it. I see again the boys of the moving picture show. This time they have forty rounds of ammunition in their belts, and no blank cartridges. The situation is critical. The command has been given, "Shoot to kill."

Do you want the rest of this vision? It is not necessary. You will see it all some day, but it will be no vision; it will be an awful, horrible reality—that is, you will unless you get sensible pretty soon and join the great peaceable army of revolt, that is standing for a charge of the economic system from the competition and trust rule to the co-operative commonwealth. Call me "dreamer", will you?

Bah! Your brains are ossified if this vision does not penetrate them.

Talk about "dreamers"—the people sleep; sleep on the brink of a volcano! Sleep while all hell is getting ready to break loose. Sleep, sleep! They even snore and talk in their sleep, and they assure each other that "all is well" in their sleep.

But all is not well; graft rules supreme; the power of greed sows to the wind; the storm clouds gather, and the
2985 handwriting is on the wall.

"Ill fares the land to hast'ning ills a prey,
Where wealth accumulates and men decay."

Oh, ye members of the army of toil! Arouse! Arouse! before it is too late, and once again this old earth be bathed in sets of blood, your blood, for it is ever the blood of the workers that is offered upon the alter of war. This applies to industrial wars as well—the kind of war that is now being waged in West Virginia. In the final analysis it will be hard for the masters class of West Virginia to shift the responsibility.

This article is being prepared while en route to West Virginia, February 10. Next week we will have definite information of the situation as reported by the Associated Press the past week.

With all good wishes, I remain,

Fraternally yours,

PAUL J. PAULSEN."

(From the United Mine Workers Journal, issue of January 2, 1913, page 1):

"Mother" Jones made a visit to Eskdale on Saturday, December 21, and held a large and enthusiastic meeting, and on the 22nd in the afternoon, at Holly Grove, gave the miners some good advise. It was interesting to note how these oppressed miners worship this venerable old fighter. They have confidence in her and believe that their cause is safe in her hands. They have been betrayed so often by the pro-
2986 fessed friends of labor that they hardly know whom to trust, but in "Mother" Jones they recognize the soul of loyalty and fidelity, a loyalty that has been tried on numberless industrial battlefields. We have never attended any meeting where such intense interest was shown.

"Mother" Jones is in deadly earnest. She took them to task, for some of them have shown such intense fear of the penitentiary."

(United Mine Workers Journal February 27, 1913, page 1)

Arrest Of Mother Jones

(By Eugene V. Debs)

"The arrest of Mother Jones at the instance of the mine owners of West Virginia for inciting to riot and complicity in murder, as announced in the press dispatches, adds another plume to the crown of that lion-hearted old warrior of the labor movement.

The charge against Mother Jones, Paulsen and the rest of the organizers is as false as it is malicious and trumped up for no other purpose than to defeat the efforts they were making with such signal success recently to organize the coal diggers who have for so many years been under the iron heel of the brutal boss.

The truth is that civil war has been raging in West Virginia during the past six months. The corporations not only control the State—they are the State. Their command is the Supreme law. The Governor is their handy man. When the coal barons whistle the constitution is suspended and martial law prevails. The supreme lackeys on the bench promptly give their judicial sanction. The state militia is the private standing army of the labor-crushing corporations, and the soldiers move like jumping-jacks at their command. They also have a standing army of strikebreakers, called
2987 guards, consisting of seasoned thugs and high-grade assassins, and these mercenary hirelings have prodded pregnant women with their bayonets and knocked down little children with the butts of their guns in their brutal attempts to force the striking miners back into the black holes of West Virginia at wages insufficient to feed so many dogs.

The newspapers and the churches are on the side of the corporations, else they would be driven out of the State. During the last few months Mother Jones has made her organizing headquarters at Charleston and directed the work from there. Vice President Frank Hayes of the United Mine Workers, Organizers Paulsen, Batley Haggerty and others have been actively at work in the same field, and in spite of every obstacle thrown in their way by the bosses, they have succeeded in getting the miners lined up for action, and this is the

reason Mother Jones and the organizers have been arrested and charged with murder.

The coal pirates of West Virginia are fighting desperately to prevent feudalism and peonage from being broken up in that State.

The day they had Mother Jones arrested they were caught red-handed buying up the Legislature like a drove of hogs. They have robbed the miners, debauched the courts, cashed in the legislature, established a military despotism to maintain their black holes of industrial slavery and brought eternal shame and disgrace upon the State.

The time has come to call a halt to these corporation slave drivers and all the resources at the command of the Socialist party and the labor movement should be put behind Mother Jones and the striking miners, and the fight pushed all along the line until these black holes are unionized and the infamous rule of the robbers has been forever broken in West Virginia.

2988

(United Mine Workers Journal March 13, 1913 Page 1)

Our Strike In West Virginia

Mother Jones, Editor Boswell and Others Refuse to Enter Plea to charge of Inciting Riot.

Charleston, W. Va. March 8.

"When Bonner Hill, sheriff of Kanawha county, bearing the process from the circuit court against the military commission appointed to try "Mother" Jones and others, stepped from train No. 14 at Pratt Friday morning, he was met by a military guard which conducted him at once to Provost Marshal John Bond, who admonished Sheriff Hill to make no effort to serve the processes he had brought from the circuit court, and as a result he spent a fruitless day in the military zone.

Sheriff Hill was not the only passenger who alighted from the Chesapeake and Ohio train at Pratt Friday morning. There were a number of Charleston citizens and newspaper men who went to Pratt to see the military commission which had ignored the order of the circuit court of Kanawha county. Members of the commission claimed that the order had not been served and under the law could not be in the territory in which they were sitting, and when the hour came for the beginning of the trial of "Mother" Jones, Paul J. Paulse, Charles J. Batley, John W. Brown and Charles H. Boswell,

charged with conspiracy and inciting a riot, the commission accounced its readiness to proceed.

John W. Brown, the Socialist leader, and Charles Boswell, the Socialist editor, asked permission to address the commission and asserted that they had no plea to make or defense to offer. "Mother" Jones also asked permission
2989 to make a statement, and declared:

Will Do It Again

"I have no plea to offer. Whatever I have done in West Virginia I have done over the entire country, and will do again when I get out."

G. F. Parsons, asserting that he spoke for the "bunch," declared:

"We refuse to make any defense whatever."

Charles Batley, while asserting that he had all the respect in the world for the court, had no defense to offer.

Paulsen attempted to make a statement, but when interrupted said it was immaterial."

2990 Mr. Drinker: I further offer from the United Mine Workers Journal, the article in the issue of the 11th of September, 1913, page 1, by Vice-President Hayes of the International organization, for the purpose of showing that the Colorado strike in 1913 and 1914 was organized and conducted by the National organization in conspiracy with District 15 of Colorado, of the United Mine Workers and the other district of the United Mine Workers.

Mr. Warrum: The defendants renew their objection.

The Court: Objection sustained.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

(Which said article, so offered in evidence, and excluded by the court, is in words and figures following, to-wit):

"Colorado, Now

(By Frank J. Hayes)

We are making splendid progress in Colorado. We feel confident a new star will be added to our banner before many more days. District 15, embracing the States of Colorado,

New Mexico and Utah, is the only district west of the Mississippi river that is yet unorganized. It is commonly known as the 'West Virginia of the West', and the same despicable tactics are being employed here in keeping the men in subjection that were used in that State. Armed guards and the so-called detectives are very much in evidence, and many are the outrages they have committed in their futile efforts to keep out our union.

Despite all their efforts, however, our movement grows stronger each day. The miners of northern Colorado,
2991 who have been on strike for more than forty-one months, are still standing loyally by the organization and are more determined than ever to defeat the efforts of the operators to make this a non-union State. Our campaign in southern Colorado, where about three-fourths of the coal miners of this State are located, will have a decided influence on the strike in the north, and I believe, will mean the complete organization of every mine in the State and the establishment of a wage agreement with our union.

Our success in southern Colorado also means the unionization of all the mines in Utah and New Mexico. This is why our campaign to unionize southern Colorado is of such vital importance at this time. We have established branch offices of our union at Trinidad, Walsenberg, Florence, Aguilar and Raton, each of these places being the center of large coal fields, and due to this division of our field forces we are able to reach all the men in the district on short notice. I have been trying for almost two months to get the operators of this district to meet us in joint conference for the purpose of discusing and adjusting all points at issue. They have not as yet replied to our invitation to meet us in conference, either being unwilling or afraid to make their position known at this time, and as a result of their dilatory tactics they are being judged rather harshly by the public, which, in the finality, will wield a tremendous influence on this situation. We have proceeded with our campaign here slowly, sut surely, diligently and systematically, until today we have the situation so well in hand that we feel we can strike this entire district, if necessary, on twenty-four hours' notice. We
2992 are at this time sending out another invitation to the operators asking them to meet with us in joint convention at Trinidad, Colo., next Monday, Sept. 15, and in the event of their failure to attend this convention, it is very probable that the miners' delegates there assembled will frame their demands and send out a strike order to all the

miners in the District. I feel sure I express the sentiment of every miner in the West, when I say, 'Colorado, now or never'."

2993 Mr. Drinker: I offer the following articles, one by one, from the United Mine Workers Journal during the years 1913 and 1914.

The Court: Relating to the Colorado strike?

Mr. Drinker: Relating to the strike conducted in Colorado during that period, for all the purposes specified in connection with the offer of the Journal articles in connection with the West Virginia strike, to go in as if I said it all over again.

The Court: You can include it by reference, without it being rewritten.

Mr. Drinker: All right, let it be included by reference without being rewritten. I offer those articles for all the purposes specified in connection with the offer of the Journal articles in connection with the West Virginia strike, and for the following additional purposes: To show that the strike conducted in Colorado during that period was in conspiracy of the purpose to protect Districts 21, 14 and 25 and the union operators located in such districts from the competition of the non-union or open shop coal mined by Colorado operators at a cost lower than that mined by the union operators in the south; and for the purpose of showing that the Colorado campaign in question, as described in those articles was part of the general conspiracy referred to; further, to show that in connection with the conduct of the strike in Colorado, the methods they used were so similar on their face as to show that they were part of a common design, with the conduct of the strike in Arkansas including such matters as the wearing of handkerchiefs around the arms of the strikers, and
2994 so forth.

Mr. Warrum: The defendants renew their objection, and ask that they give us a list of these articles.

The Court: That may be done.

Objection sustained.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker: I will give counsel and the stenographer a list of them.

The Court: Very well.

(Which said articles, so offered in evidence and excluded by the court, are respectively in the words and figures following, to-wit:)

(From the United Mine Workers Journal, issue of January 25, 1912, page 1, column 1:)

"Tellers' Report

Indianapolis, Ind. Jan. 18, 1912.

—Delegates to American Federation of Labor—

Adolph Germer ..... 33,215"

(From the United Mine Workers Journal, issue of September 11, 1913, page 1:)

"The Colorado Miners Are Satisfied Now (?)

(By Adolph Germer.)

Walserberg, Colo., Sept. 4.

A call, signed by International Vice-President Hayes, International Executive Board Member Lawson, President McLennan of District 12 and Secretary- Treasurer Doyle of District 15, has been sent to every operator in the State
2995 asking them to participate in a joint meeting. We want a settlement of the miners' grievances without a strike. Whether the operators want a settlement without a strike remains to be seen. If they do not and a strike results, which will be the case if they continue their arbitrary attitude, the responsibility for all that follows will rest with them. We have delayed and postponed independent action in the constant hope that they might yet come to their senses and meet with us as the mine owners do in other states. We have about reached a place where decisive action must and will be taken. The Colorado miners are anxious to respond to the call to action. The opportunity to gain a signal victory was never better. The agents of the operators tell the miners that we are only bluffing; that we have no intention of calling them on strike and support them in a fight; that our only reason for calling those meetings is to excite them and get their money.

The foolish fools that these intelligent agents of the mine owners are. Has West Virginia been no lesson to them?

They shall see that we mean business and that we will prove true to the trust the miners repose in us."

(From the United Mine Workers Journal, issue of November 6, 1913, page 1 and 2:)

"Latest News

(Special to the Journal.)

Denver, Colo., Nov. 3.

Denver business men today, under auspices of the Commercial Club, demanded Governor Ammons to take immediate steps toward early resumption of mining coal. Coal in
2996 Denver is sold at $7.50 a ton. All the factories are paralyzed, and there is much suffering among the poor people.

The operators attempt importation of strike breakers by hiring them for the Pueblo steel plant, and then taking them to the mines. A gang of them was escorted by guards to Walsenburgh, and was met by a crowd of strikers. A battle ensued and several strikers were wounded. Governor Ammons states that the importation is contrary to his orders and that the militia must prevent it.

At a monster meeting held in Canon City public sentiment is pronounced in favor of the miners. Public meetings are being held all over the State, demanding prompt settlement.

Strikers and soldiers played ball at Ludlow Sunday.

ED. WALLACE."

(From the United Mine Workers Journal, issue of November 13, 1913, pages 1 and 4:)

"Our Strike in Colorado

The Latest News

Trinidad, Colo., Nov. 10.

Four guards were killed in a battle outside of Laveta. A drunken top boss incited trouble, then called guards to rescue him. Five armed guards in an automobile menaced miners with Winchesters outside of town and engaged in battle with five strikers. Four killed. Top boss wounded. Strikers unhurt.

Vice-President Hayes addressed monster crowds at Boulder and Trinidad. The audiences were composed mostly of

business men, farmers and outside workers, who are
2997 very sympathetic with the miners' cause.

Guards join militia in committing many depredations. They search miners' houses and tents, ostensibly for weapons steal money and watches. Suspected, they join the militia with intent to create friction between soldiers and strikers. Governor and General Chase notified.

ED. WALLACE."

"The number of rifles that miners were in possession of an have hidden out since the coming of the militia is frowning constantly like fat 'Sir John Falstaff's men in buckram,' and probably for the same reason."

(From the United Mine Workers Journal, issue of December 4, 1913, page 4:)

"Militarism Rampant

As usual, the promises made by those responsible for sending the militia, into the strike field of southern Colorado were insincere, were never intended to be redeemed.

The miners, though doubtful of the promises of the officers to give a square deal to all, realized that it would be difficult for the military to act any worse than the sheriffs of the two counties, who had practically surrendered their offices to the important gunmen of the operators.

But not for long were we allowed to deceive ourselves with hope of fair treatment from the soldiers of the State. Possibly many of the rank and file were in sympathy with the striking miners, but the officers, especially the officer in command, General Chase, were not long in showing beyond
2998 doubt that they considered it the duty of the militia to force the miners to return to their slavery in the mines, without the protection of a union for which they were contending.

General Chase served under Sherman Bell during the Peabody regime, and soon indicated the fact that he was capable not only of duplicating the tyrannous action of that infamous blackguard, but could be induced to go further than Bell ever dared go, in his anxiety to serve the interests.

The good-will that was evident between the miners and privates of the militia did not fit in with his plans of coercion. To destroy that he began to enlist the companies' hired thugs, and with these in the ranks, the conduct of the militia soon ended that era of good feeling.

Ostensibly hunting for arms, they ransacked the houses of the strikers, stealing money and any portable valuables they could lay hands upon.

The killing of G. W. Belcher, one of the guards who had made himself hated by his career of murder in many States, gave him the excuse he had been anticipating, to place the military above the civil authorities.

By whose order this man was taken off we do not know. The man Zancanelli, who is alleged to have confessed, has been kept "incommunicado'. No one has been allowed to speak to him except one Broughton, another relic of the Peabody regime; a known creature of the operators who has set himself up as prosecutor and persecutor. Part of his, Zancanelli's alleged confession is disproven by the unsolicited testimony of a newspaper correspondent, who was at
2999 union headquarters and in communication with accused union officials at the time the plot was alleged to be made.

The military court in West Virginia has met with such universal condemnation from every source, it was never anticipated any one would ever again attempt to establish one while civil courts were accessible and able to perform their functions.

The actions of General Chase can only be explained by the charges made by many, even before he was sent into the strike field, that the boasted five millions of dollars the operators said they would use to defeat the objects of the strike were in part at his disposition; would be used to hold up his hands while he robbed the citizens of the state of their every constitutional right; set the rule of force above the rule of right.

As we have said in previous articles, illegal force must be opposed. We appeal to the government of the United States for redress; for justice.

And if it be refused there we must appeal to the only tribunal that is left to us.

We will not give up the rights our fathers fought for at the behest of any prostituted official, civil or military.

On the heads of those who force this issue on people who would prefer peace be the results of their tyrannical, illegal acts."

(From the United Mine Workers Journal, issue of January 8, 1914, page 4:)

"Law and Order

3000 The citizens' alliance has made its appearance under the name of the Routt County Taxpayers' League. A mob of citizens in Steamboat Springs, Coco., entered a court room where striking coal miners were having a hearing and stopped it. The sheriff was forcibly taken from the court room and Frank Garier, J. L. Ferguson and John Steinhart were notified that they had twenty-four hours to leave the county. They then went to the jail, made the jailer open the door and released four men who were awaiting the outcome of the hearing.

To complete the farce which has resulted in the sending of troops to Routt County, the citizens' alliance declared that they would go to Oak Creek and force the 300 striking coal miners to leave the county. This gave Governor Ammons his long-wanted excuse to call out the State militia to protect his own large interests in that county and those of the coal operators. It is said that the militia has been sent there to disarm the miners and deport them, but that will not be known until the soldiers are in the field. In the meantime the union has ordered all men to stand for their rights as American citizens and to shoot to kill if anyone other than a regular peace officer molests them."

(From the United Mine Workers Journal, issue of January 22, 1914, page 6:)

"From Colorado.

Will Fight to the Death.

Florence, Colo., Jan. 16.

3001 The mass meeting of the Fremont county miners, held at Rockvale, Colo., January 15, was one of the largest meetings that has been held in the county for some time and shows that the boys are going to fight to a finish. We had a large parade led by the Coal Creek and Rockvale bands. There were between 12 and 15 hundred men in the meeting which showed that there will be no compromise as some self-styled committee men in Fremont county would try and make people believe, as the miners of Fremont county will not go back to work unless we get full recognition of the union, and, if necessary, we will sell our lives dearly to win this great battle and will never go back until we get full justice. Everything is going along fine and the men are in the best of spirits.

There is no production of coal to amount to anything in this county and the scabs that they are getting in can't produce the goods.

There are two guards to every scab and the companies can not stand that long. We all feel frateful to our brothers in the East for the way they are coming to our relief.

THOS. SCOTT, Vice-Pres., Dist. 15."

(From the United Mine Workers Journal, issue of April 2, 1914, page 3:)

"Will The Guilt Lie There?

(By Adolph Germer.)

Mother Jones is perfectly right and entitled to the highest praise and admiration for defying the sheep raiser who occupies Colorado's executive chair, and General Chase. Ever since the militia came into the strike field they have
3002 defied all law under the orders of Chase with the connivance of Ammons. Has Mother Jones not as much and more right to defy Ammons and Chase as they have to defy the legal guarantees of state and nation? Who are Ammons and Chase that they can defy state and nation and no one can defy them?

That Ammons and Chase in their fiendish desire to pliantly serve the Standard Oil interests have surpassed all bounds of reason has at various times been confidentially admitted by military officers in service in Colorado. Many acts that these officers perform under orders from Ammons through Chase or from Chase with the approval of Ammons are most distasteful to them. But they are soldiers and obey.

The Pueblo Chieftain, the leading slimy mouthpiece of lawlessness, on March 19, in an editorial says: 'If bloodshed results from Mary Jones going back to Trinidad the guilty ones will be those who are advising her to defy the State of Colorado.' Will they be the guilty ones? Are Ammons and Chase the State of Colorado? If so, since when? Has Colorado's citizenship so disintegrated that nothing is left of the state except Ammons and Chase? Colorado's populace is deserving the utmost pity it it has been so sapped of its being that nothing is left but a specimen of humanity that can offer no logical reason for its existence and a bundle of singular egotism wrapped up in a uniform.

Let the people of Colorado decide by vote whether or not Mother Jones shall be permitted to go back into the strike

region. If the people of Colorado were to determine
3003 that question Ammons and Chase would be 'snowed under' so deep that the infernal regions would not be able to thaw them out.

The Chieftain would have Mother Jones renounce her womanhood and bon in cringing sycophancy to the depotism of Ninny Ammons and Czar Chase.

Lieutenant Linderfield on one of his rampages became so intoxicated that he, like a madman, shrieked, 'I am Jesus Christ.' What a wonderful combination! Ammons and Chase are the state, while Linderfeld is Jesus Christ. Whatever they may or may not be, one thing is certain, they have demonstrated their utter unfitness to be entrusted with the destines of the people and clothing them with power gravely endangers the much-boasted liberties of the state and nation.

No, if blood is shed because of the return of Mother Jones to the strike zone the guilt will not be with those who advised her to return, but on the contrary, it will rest with Ammons and Chase and the kept, lying press of the moneyed interests which the Chieftain may justly boast of heading.

Had Ammons shown some backbone in the early stages of the strike and had he not exhibited a 'yellow streak' when the test to be a man was put to him, Colorado would not be paying $5,000 per day to ruffians in uniform to perform the most criminal acts in the interest of the coal barons.

The blood that has been shed, and that the Chieftain predicts that will be shed, will forever besmirch Ammons and Chase and those they serve. They are evidently ashamed of
their work and in their desperation are trying to fix
3004 the public's attention on those who are gallantly battling for their legal and inherent rights. They figure that if they can fix the attention upon the strikers, their own miserable and contemptible acts will escape detection.

Every crime that is being committed by those who claim to be the state will raise the veil of obscurity from the vision of the working class and soon they will avenge the grievous wrongs they are now suffering. Soon the working class will march to the ballot box and snatch from plutocracy that power which has always been used to enthrone wrong and crucify the right.

The unrest is spreading throughout this nation and abroad. The tyranny exercised by the money-mad of the world is

arousing labor from its slumber, and the day is not far distant when the citadels of oppression and the oppressors will fall and right will make right.

Mt. Olive, Ill., March 28, 1914."

(From the United Mine Workers Journal, issue of April 30, 1914, page 2:)

"Fighting Continues With Assault Made On Chandler

Seven Persons Said to Have been Killed.

Denver, Colo., April 26.

After an all-day battle, between union and non-union coal miners, the town of Chandler was captured tonight by 1,100 strikers, according to messages reaching the governor's office.

Seven men, including four mine guards, were said to have been killed in the battle. The casualties in the strikers' ranks are unknown.

3005 Canon City is terrorized lest the combatants carry the fight into that town, which is only a few miles from the mine.

An appeal to the governor for help from the sheriff of Fremont county, resulted in orders being issued tonight to General Chase to proceed to Canon City with 200 militia to take protective measures and endeavor to bring about a truce.

At Trinidad tonight 102 armed deputy sheriffs with a Gatlin gun are entrenched in the court house. This precaution was taken because it was understood that Judge Musser, of the Colorado Supreme Court, and others of a committee appointed by the governor to investigate conditions were about to arrive.

Truce to Be Brief.

The truce lasts only until these men get there from Denver and announce what they will try to accomplish. Should this be unsatisfactory, it is said nothing can prevent an immediate battle.

General Chase, in charge of the troops, this afternoon again turned back members of the Red Cross society, who are trying to get into Ludlow from Trinidad. He declared he would let no person go into Ludlow unless the governor gave him direct orders to do so.

A crowd of 5,000 men and women stood in a pouring rain on the lawn in front of the capital this afternoon and heard the state administration denounced for 'permitting murders in the southern coal district.'

'Mother' Mary Jones, direct from Washington, created a sensation when she appeared, up to then unannounced.

3006 Just before the arrival of 'Mother' Jones a resolution deleging that within the last 20 years 2,000 miners died because 'dividends could not be lessened by the expense of improvements'; that the state, county and municipal officials had been purchased and election machinery seized, desperadoes hired and militia used as a constant threat.

Lives Are Pledged.

The resolutions pledged the lives and liberty of the audience to the relief of 12,000 men, speaking thirty-six tongues. The strike districts which were in revolt demanded the withdrawal of troops; the seizure of mines by the state pending agreement by the strikers and operators; the canceling of leases of 13,000 acres school lands and the development of the state's coal land acreage; a constitution amendment, repealing the Moyer decision; denounced Governor Ammons and Lieutenant Governor Fitzgarrald as traitors to the people.

At the conclusion of the speech-making the meeting adopted resolutions, condemning Governor Ammons as an accessory to the murder of babies and demanding his impeachment.

The cigarmakers' union of Denver voted money to send 500 armed men to Trinidad and Ludlow tomorrow. These men will start at daybreak.

The Denver Federation of Labor this afternoon adopted a resolution to be presented to the national organization, asking that each of the 2,000,000 union laborers in the United States be assessed 5 cents a month to provide money and arms for the strikers."

3007 "Strikers Succor Enemies Wounded And Non-Combatants

All Day Battle Rages in Mining Field.

Many Mines Destroyed by Avengers.

Trinidad, April 24.

Twenty Face Death In Mine.

J. W. Siple, Denver, president of the Southwestern Fuel Company, and twenty of his men are facing death tonight in the Empire mine as the result of their refesal to surrender to the strikers at Aguilar early this afternoon.

Three women, two children and two wounded men have been removed from the mine pit, preparatory to the resumption of the fighting.

A supply of air sufficient to last the captives about twelve hours remains in the mine, it is said. Unless aid reaches them by that time they will face the alternative of dying by suffocation or throwing themselves on the strikers' mercy.

Those who have been taken from the pit are William Waddell, mine superintendent, shot through the shoulder, his wife and Louis Waddell, their 13-year old son; Mathew Waddell, mine clerk, and also Waddell's son, shot through the foot; the young Waddell's wife and their 9-months-old daughter, and Mrs. John McIntyre, wife of the camp blacksmith.

J. W. Church, the mine's chief engineer, reported to have been killed in yesterday's fighting, is within the mine and safe. The only condition imposed by the strikers was that the men should surrender their arms and accept safe conduct from the district.

The wounded men, women and children who accepted it
3008 were conducted to a place outside the danger zone, and, if possible, will be placed on a train for Pueblo this morning.

At the Southwestern mine, which broke into flames early this afternoon, a battle is raging between guards and a strong force of strikers. The tipple and the camp have been destroyed, according to a report which reached here tonight, and the guards have been forced back into the mouth of the stope.

Firing All Along Canon.

The firing is spreading rapidly all along Green canon, in which both the Empire and the Southwestern mines are located.

Virtually the whole strike zone is in a state of terror. Should the troops fail in running the eighteenth-mile gauntlet

spread for their reception, more damage may be done to property. Should the militia succeed, it is possible that the guerilla warfare will exist for weeks.

John Lawson, International Board Member of the United Mine Workers of America, announced definitely this afternoon that he would refuse to order the strikers to surrender their arms until they had been assured that they would receive fair treatment at the militia's hands. 'There can be no peace without justice', he said.

Communication into the war district from Trinidad has been completely interrupted, and grave fears for persons on the mine company properties are entertained.

Enormous Loss Is Feared.

The mines now known to be ablaze are the Primrose, of the Colorado Fuel and Iron Company; Mine No. 4 of
3009 the Southwestern Fuel Company; the Green Canon mine of the National Fuel Company, and the Rugby mine of the Colorado Fuel and Iron Company.

In addition to the Royal and Broadhead mines, both operated by independent companies, are in ashes.

Major Hamrock, at the Ludlow camp, announced late tonight that he was seriously contemplating the sending of at least a substantial proportion of his force in the direction of Augilar, so serious did he consider the situation there.

Aguilar is Fight Center.

The storm center of the trouble virtually shifted today to Aguilar, and the liberation of the three women and five children from the pit of the Empire mine marked the first cessation in the fighting in more than twenty-eight hours. According to the reports of the trouble which have reached Trinidad, the shooting commenced at about 9 o'clock yesterday morning, when the strikers began to pour shots into the camp from the surrounding hills.

In anticipation of trouble, the women and children, under the direction of President Siple and the other mine officers, had been removed to the tipple, about which the fight immediately centered.

Fire in the houses of the camp broke out almost immediately and, fanned by the light breeze, spread rapidly. The firing meanwhile redoubled and the shots ripped through the

tipple house until it soon became untenable. The women are crowding in the slope, the entrance which Siple and his companions attempted to hold.

Three Strikers Killed.

3010 In the fighting before the entrance of the drift, three strikers, J. P. Gomez, Ben Vigil and Nick Schumich, were killed and a mine guard either killed or wounded.

The force of strikers about the entrance to the mine grew rapidly in number, but it was the spread of the flames to the tipple house which finally drove its defenders to abandon it and retreat further into the mine. A few moments later the strikers, according to R. D. King, one of the mine owners, who witnessed the engagement from his residence, a quarter of a mile away, effectively closed the entrance with dynamite. Shortly thereafter the wrecking of the fan cut off the circulation of air through the working and the air shaft was blocked.

Communication Cut Off.

The flames, which spread through the camp until every building was ablaze, cut off communication with the entombed persons until shortly after noon.

It was then that E. N. Enyder, one of the Aguilar strike leaders, announced over the telephone to Trinidad that an effort to reach Siple and his companion for the purpose of liberating them from their hazardous position, provided they would surrender their arms, was to be made.

Snyder said tonight that Siple had refused the proposal of surrender, though he had intimated that he might change his mind. Snyder also said that personally he 'Didn't care what he did.' 'The only quarter asked by Siple', he declared, 'was protection for the women and children.'

3011 According to reports which have been received from the younger Waddell, he received his wound when he ventured from the mine stope, in which his father and the others were imprisonel, to recover a bank book which had been abandoned in his house.

While he was in the house the place was surrounded by strikers and he was taken prisoner. On his way to a boiler house, where he was to be detained, he was shot in the foot. His captors declared the affair was an accident. The elder Waddell received the bullet in the shoulder in attempting to go to his son's assistance. He succeeded in crawling back to the

mouth of the slope, into which he was drawn. None of those in the custody by the strikers complained last night of the treatment they had received.

The fighting this morning began shortly after 5 o'clock, when from the Empire property and the town of Aguilar the strikers' forces surged northward, carrying everything before them. Their numerical strength at various places was estimated at between 700 and 1,200 men. For the most part little or no resistance was offered.

Primrose Property Fired.

The Primrose property, from which the women and children had been removed to Rouse during the night, was the first to be consigned to the flames. Before volleys from the hills its defenders fell back, from building to building, until finally they were forced to flee to the hills.

A moment later the mine tipple and other wooden structures were ablaze and at 9 o'clock reports of dynamite heard
3012 at Rouse gave evidence that the stope and probably the air shaft had been destroyed.

Strikers surged over the ridges next in the direction of Rugby, which was evacuated by the few men who remained with the buildings without a struggle. Shortly thereafter, according to report, it also burst into flames.

Strikers Ready for Attack.

The strikers then marched on Rouse, which is still unattacked, according to the best information obtainable. The last message sent out by its superintendent before communication was cut off was directed to the Colorado Fuel and Iron Company's offices here.

'For God's sake, send help,' it read. Since Rouse forms the key to the mines at Lester, Cameron and Walsen, it is feared that a determined effort to take it may be made.

At Cameron, as a precautionary measure, women and children have been placed in a concrete cellar, and similar steps have been taken to insure their protection at the other menaced points.

The last of the camps to report fear of attack were Primero and Segundo, operated by the Colorado Fuel and Iron Company. All the women from the strikers' Segundo tent colony have been removed, according to the superintendent's report, and a large party of armed men is visible on the hills. Neither

of the camps could withstand a determined assault. Similar forces of men are visible on the heights above Berwind and Tabasco in the immediate vicinity of Ludlow, but no fear for their safety is entertained in view of the proximity of
3013 the militia men who occupy the Ludlow depot.

The Black Hills, held by the strikers, and Cedar Hill, on which the militia's machine guns are mounted, exchanged shots yesterday at long range, but no close fighting occurred. So far as is known no one was hurt.

Families Rushed to Trinidad.

The women and children in the vicinity of Segundo have nearly all left. The strikers' families have been brought to Trinidad, and the families of the railroad workers at that place have been taken to Weston.

Trinidad is crowded tonight with hundreds who have come in from all over the district through fear of further outbreaks in the camps. The crowds were orderly. Extra police were stationed at the morgue and at the hall where the bodies of Ludlow victims lie in state.

Funerals of Premo Larsie, Frank Robino and William Fyler were held yesterday. The bodies were accompanied to the graves by long processions.

A general funeral will take place today over the remains of sixteen of those who lost their lives at Ludlow. Separate services will be held for Louis Tikas, leader of the Greek colony at Ludlow, who was killed by militiamen near the close of the day's fighting.

An Italian fraternal order has contributed $600 for the relief of Ludlow victims."

3014 "Mothers and Babies Slain in Safety Pits.

Tents are Fired and Victims Perish From Smoke While Men, Trying to Rescue Their Families, Are Killed by Machine Guns and Rifles; Renewal of Battle Expected.

(B. Harvey V. Deuell.)

(Staff Correspondent of the Rocky Mountain News.)

Trinidad, Colo., April 21.

Thirty-three dead, more than two-thirds of them women and children; a score missing and more than a score wounded,

is the toll known tonight to have been taken by the fourteen-hour battle which raged Monday and last night with uninterrupted fury between State troops and striking coal miners in the Ludlow district. The death list is growing hourly.

With arms ready, both sides now await the coming of dawn, when, it is forecast, the battle will be resumed with greater bloodshed than that which has occurred. The militia, which yesterday drove the strikers from their tent colony, and it is charged, fired it, involving thereby the greatest loss of life, is preparing for a machine gun sortie at daybreak from their position along the Colorado & Southern railroad tracks at each side of the Ludlow station.

On the surrounding hills, sheltered by rocks and boulders, 400 strikers await their coming, while their ranks are being swelled by grim-faced men who tramped overland in the dark, carrying guns and ammunition from the neighboring union camps. Italian, Greek and Austrian miners have ap-
3015 pealed to their consular representatives for protection and John McLennan, president of the local union district, today wired the Red Cross in Denver to be prepared to render aid.

On the outcome of the engagement tomorrow may depend the fate of the strike. Both sides face it as a battle of death, with no thought of quarter asked or received. At a late hour it was said here the battle could be averted only by the arrival of reinforcements from Denver.

No train service through the war zone is permitted. Telephone communication has been re-established. Major Hamrock is in command of the troops, hemmed in on all sides by the striker lines, which extend back three miles. Through this cordon only the dead wagon is allowed to pass."

(From the United Mine Workers Journal, issue of April 30, 1914, page 8:)

"Colorado or Mexico?

(By Adolph Germer.)

Mt. Olive, Ill., April 27.

Where in darkest Russia have there been such horrifying crimes committed in the interest of capitalism and where has militarism run so mad as in the strike region of Colorado? Where on earth has the brutality of capitalism so fully unmasked itself as when the helpless women and innocent chil-

dren of the strikers were unmercifully shot and burned to death by professional murderers, clad in military uniform?

Governor Ammons, General Chase, John D. Rockefeller, Jr., Major Hamrock, Lieutenant Linderfelt, Sheriffs
3016 Farr and Grisham, Jesse Northcutt and several others are the chief actors in the carnival of crime that will forever leave a stigma on Colorado. They are responsible for the murders that have grown out of the strike. Had they done their duty, had they done one-half as much to enforce the law as they did to violate it, the strike would have ended in its infancy or perhaps been entirely averted.

All hail to the miners for the noble defense they made against the paid assassins. And all hail to the Printers' Union of Denver for sending $500 to the United Mine Workers of America with which to buy guns. How I would that every other union that has funds would follow this splendid example!

I spent more than a year among the Colorado miners. They are men of all nationalities, but they have only one purpose, and that is—the establishment of at least a degree of justice in that state. In this effort they deserve the fullest support of every person who has a human heart. Those strikers are not fighting against 'duly constituted authorities'. They are fighting against usurped power and prostituted authority. In that fight I cheer them on and wish that circumstances might warrant my being with them again. Were it within my power I should without hesitation recruit an army of several thousand men, with fearless hearts and keen eye, each one equipped with the best rifle that can be had and plenty of ammunition, and I would enjoy marching this army against Ammons, Chase and Linderfelt and drive these inhuman monsters to Hell, where they properly belong. If by some magic stroke I could this very moment put five thousand well-provided
3017 men into Colorado I would do it without equivocation, and I should finish what the brutes in uniform and high places have started.

I am not an advocate of violence, and have not lost faith in the power of the ballot, providing the enemy fights with the ballot. But when the enemy places guns in the hands of paid assassins, to wantonly slaughter the innocent, more than a ballot is needed to rebuke the crime. If it means death, we had better die fighting for the right than be shot down and burned to death without resentment. Let the slogan be, 'An eye for an eye, and a tooth for a tooth.'

Why go to Mexico when we have a Mexico within the confines of these United States? Why not first Americanize Colorado? Why not make Governor Ammons, General Chase and Lieutenant Linderfelt, who claims to be 'Jesus Christ', salute the flag? Why not enlist in an army to defend the 'national honor' at home? The stars and stripes were floating from a mast staff in the strikers' tent colony at Ludlow, and from nearly every tent, when rifles and machine guns were turned loose upon the strikers and their families. The stars and stripes were shot into and burned down as well as the women and children.

What patriot, bubbling over with a desire to defend the 'national honor' in Mexico, has shown an eagerness to defend the 'national honor' at home?

Why not first Americanize Colorado? It is also a land of Rockefeller.

Let the good work begin at home."

(From the United Mine Workers Journal, issue of
3018 May 7, 1914, page 3, three articles:)

"Chare Refuses Truce Nine Militia Killed

Walsenburg, April 29.

Nine militia-gunmen were killed today by strikers after General Chase had refused to agree to a truce offered by leaders of the strikers.

Leaders Peter Quinn and E. M. Snyder, in charge of the Walsenburg district strikers, offered this morning to observe a truce until the United States troops came if the gunmen-militia would return to their tents. The militia commander communicated with Governor Ammons and Ammons with General Chase about the allowing of a truce. Chase and Ammons, anxious to do everything they could for the operators before their gunmen-militia should be disposed by the regulars, refused and the gunmen-militia tried to take the hogback, the strikers' position, nine of the gunmen falling. Firing is heavy this afternoon.

Every mine in the Walsenburg district, with the exception of the Walsen mine, the strongest fortified in the state, are in the hands of the strikers following thirty hours of fighting after Jeff Farr and his gang of gunmen attacked the strikers.

One hundred and fifty gunmen-militia were brought here from Ludlow last night and General Chase instructed them to

disarm the strikers and let the gunmen retain their arms, which the strikers refused to allow.

Henry Ford was killed by the gunmen-militia when he left the McNally mine on his motorcycle with a girl on the rear seat. The gunmen, following their plan of fighting men, 3019 women and children alike, turned a machine gun on him, killing him."

"Revolution Imminent Says Mother Jones

'The working people of America have stood all they can bear.'

It was Mother Jones sleaking with a conviction so apparent that it startled.

'What does all this strife and turmoil growing out of the coal strike and the Ludlow massacre mean?' This was asked this 82-year old, white-haired, ruddy-faced, forceful woman, who lay in Governor Ammons' bullpens in southern Colorado for three months, in an effort to arouse the voting women of the state to protest.

It means that the workers would rather die fighting to protect their women and children than to die in death trap mines producing more wealth for Rockefeller to use in crushing their children', she added.

'It means that the whole nation is on the verge of a revolution.'"

"12 Die Before U. S. Brought Peace

Walsenburg, Colo., May 1.

Peace again reigned here and the 160 strikers who made it so hot for the militia in a three-day battle that General Chase sued for a truce over the 'phone from Denver have returned to their homes, taking their guns with them.

The total dead in the fighting was ten gunmen, one militiaman and one striker, who was shot by his friends when he lost the identifying white handkerchief they all wore on their arms."

(From the United Mine Workers Journal, issue of May 3020 14, 1914, page 3:)

"Spirit of Revolt

(By Michael Halapy.)

'You knock a man into the ditch, and then you tell him to remain content in the 'position in which Providence has placed him' '—Ruskin.

It is but natural that the man in the ditch should revolt, especially if he has been knocked there by some external force designed to divest him of personal liberty and well-being. Any effort to keep him there meets with violent resistance. It is his constant vision to perfect himself and his surroundings. Everyone has an ideal. Some recognize it not, and pursue it blindly. But those who know their ideal as if it was already an actuality are methodical in its pursuit, and uncompromising with forces militating against its attainment.

The man in the ditch has an ideal. He might be humble in appearance, but he is majectic in the spirit. The impulses that he feels are the motive force of the world. Discontent fills his soul and he wants to climb out of the ditch. Laudable is his effort, for it is the chief cause of all achievement, of all progress.

To tell the man in the ditch to be content is to insult him. To say that his being there is the act of Providence is an attempt to charge up to omnipotency the human cruelties and barbarities. Indeed, if it were the decree of Providence that human beings with souls and aspirations should live in ditches of poverty and degredation, then any attempt on their
3021 part to throw off those degrading influences would be a rebellion against God. For rebellion it is. But it is a rebellion against human injustice.

Today all over the world the man in the ditch is in rebellion against the forces striving to hold him there. He is a rebel at heart. He can not help it. Conditions made him such. He was born to cherish and love all those conditions which blend with his idea of justice and mercy; and his disposition is to be peaceable and rather tolerant. But great wrongs can not be tolerated. And of all the wrongs that which keeps an industrious man in the ditch is the greatest, for it does not only restrict the moral and material advancement of the man itself, but it also retards the progress of the world.

It should not be necessary for man to fight for the fruits of his labor. Industry should bring its own reward; and the man in the ditch should be permitted to rise, to elevate to

the full brilliancy of his manhood. But he has to fight to get out. Were it only to climb out the effort would be easy and the world would make more progress in one generation than it has in a thousand years.

To the man in the ditch mankind owes an infinite debt; and it should emblazon him with all the honors of a brave warrior who has fought a constant battle for human progress and civilization.

But for all his sacrifices and achievement this ditch-man is held in wholesome contempt by tyrants who oppose his laudable ambition to rise with the rest of mankind; and with a club, with a rifle, and with a machine gun, they en-
3022 deavor to knock him back into the ditch. But as through all the ages, so now, flows in the mail of truth, the man in the ditch boldly meets and fights his foe. He fights for freedom. He sacrifices his life; his dear ones; his all for freedom. For real happiness can only be had in freedom. And has it not been aptly said 'Give me freedom or give me death?'

And so it is with the striking miners in Colorado. They fight for industrial freedom—freedom to work out their own destiny, and slaves can not do this. The Rockefellers knocked them into the ditch, but they refused to stay there while they took the fruits of their labor. They tried peaceably to get out, but the tyrants would listen to no progress on their part, while they are aggrandizing the whole world. At this stage it would be well for the oppressors of the [woor] to remember that tyrants are becoming more and more hateful in the estimation of civilized people; and tyrants especially who are responsible for the massacre of innocent women and children will certainly not be tolerated.

Let us delight in the spirit of revolt so sublimely manifested by the Colorado miners. Theirs was genuine chivalry when they took up arms to avenge the cruel, merciless murder of their wives, mothers and children at Ludlow. Submission to this unspeakable horror would be cowardly and unexcusable, and shameful in men struggling for freedom.

Human progress can not be stopped with a gun or a club. This has been tried again and again throughout the
3023 centuries and mankind has kept on moving. The man in the ditch will certainly climb out in spite of the swaggering industrial despot. He will fight to get out; and he

is entitled to high praise for this display of courage, for he is fighting for you, for me, for everybody."

(From United Mine Workers Journal, issue of May 14, 1914, page 2, two articles:)

"Legislature Approves Massacre

Grand Jury Indict Home Defenders

Denver, Colo., May 16.

The state of Colorado has placed its stamp of approval on the murder and cremation of men, women and children at Ludlow by murderous mine guards in militia-men's uniforms.

The coal operators paid some of these men $3.00 a day to carry out their work of slaughter. Up to the time of the Ludlow massacre there was some question as to whether these assassins should also be paid by the state.

But when they, clothed with the authority of the state, dressed in the uniform of its militia, and, using the machine guns of the operators, swooped down on Ludlow April 20, burned it to the ground, killed and cremated 13 women and children and deliberately murdered Louis Tikas, and five others, they did such a noble service for Colorado that the state legislators decided this week to reward them by voting to pay them.

If there was ever any question that Colorado is owned body and soul by John D. Rockefeller, that idea was dispelled this week when the state legislature met. Rockefeller and
3024 his gang immediately took charge. Speaker Slattery, of the house of representatives, saloon keeper and gambler, whipped the corporation tools into line. Public sentiment alone prevented the establishment of a mounted Cossack force and a gun bill.

The passing of a million-dollar appropriation bill, however, shows clearly what labor can expect from the Colorado state government. Seven hundred thousand dollars of this is to pay the militia thugs and operators' assassins who for over six months intimidated the strikers in southern Colorado, murdered and assaulted them, insulted their womanhood and robbed and plundered their homes This amount includes payment of the gunmen who were responsible for the Ludlow horror.

Colorado spent $700,000 in an attempt to break the strike of the coal miners. Today victory for the miners is but a

short distance away. Ammons and Chase and others of the operators' tools determined, however, that victory shall not come to the miners until they have spent their every effort, so they had their gambler-led legislature provide $300,000 addition so that the militia can go back to the strike zone, if the federal troops leave, to complete their work of carnage.

The corporations played their usual card in labor struggles this week when they indicted six men for murder and more than 100 for conspiracy to murder one man who was killed in the Boulder county troubles.

'Indictments of this character need not come as any surprise to men prominent in the labor movement', said John R. Lawson, who is in active charge of the strike. 'Some-
3025 times they come because the county officials are honest and jealous to perform their duty and serve their constituents and in an effort to preserve the law. Sometimes they come in a blind effort to help the corporations in their mad scramble to destroy all vestige of organized labor through intimidation and persecution. At other times they came because some of the county officials are anxious to build up on a false foundation, at the expense of the county and the people, they are sworn to serve a political future. I have not at any time been able to discover a district attorney who was even willing to prosecute the coal corporations in whose mines dozens of men have been murdered through their negligence. The miners' officials or the miners do not fear to meet a jury in any court of any country where they have an opportunity to get that measure of justice to which they are entitled.'

Among those indicted for murder was W. T. Hickey, secretary of the State Federation of Labor. His case shows how far the rotten government of the state will go in their struggle to destroy every vestige of labor in Colorado. Hickey not only was not in the fighting in which one was killed, but he was not even in Boulder county, where the indictment was brought in by the grand jury.

But Hickey is prominent in the labor movement, and that is sufficient reason for indictment on any charge in Colorado.

Federal troops have restored order in the strike district. The future must take care of itself. The serious condition of affairs in Mexico makes it certain that federal troops
3026 will not remain in Colorado very long. When they leave the operators will soon find an excuse to have their pet Ammons send the militia back to 'preserve the

peace'. The people of the United States know what this potpourii of barrel-hous bums, Baldwin thugs, women and children murderers and cremators did before. A leopard can not change its spots. It is but natural to expect that they will renew their carnival of slaughter and carnage."

"3,000 Rifles Surrendered To Soldiers

(By United Press.)

Trinidad, Colo., May 14.

More than 3,000 fire arms and about 70,000 rounds of ammunition have been surrendered to the federal soldiers here at 5 p. m. Wednesday, when the time for voluntary disarmament, according to Col. James Lockett's orders, expired.

Army officers said they believed both sides had given up all available guns, and a general search and seizure of arms was regarded as improbable.

The striking miners gave up, altogether, 852 rifles, revolvers and shotguns, while the nine guards surrendered 5 machine guns and 840 rifles, revolvers and shotguns. Three hundred of rifles turned in by the strikers were one shipment from a New York manufacturer.

Figures are for Huerfano and Los Animas counties only.

The new Ludlow tent colony was laid out by union officials Wednesday afternoon. It is to be almost on the site of the old colony, which was burned by state militiamen on April 20."

(From United Mine Workers Journal, issue of May 21,
3027 1914, page 7:)

"From Oklahoma

The Crowning Crime of Capitalism

Henryetta, Okla., May 12.

When we glance back over the ghastly history of the Alabama, West Virginia and Michigan strikes and the crimes committed against our striking brothers by capitalistic hired thugs and assassins and culminating in the horrible massacre of Ludlow, we can only say that capital has overplayed its hand. All the crimes of Government Comer's militia, the armored train of West Virginia, the death trap at Calumet, the cavalry charge on marching women at Trinidad and thousands less conspicuous details of the murderous war of the capitalistic class against the workers has had it cap sheaf

of infamous lawless deeds when the Rockefeller hired murderers destroyed and massacred the Ludlow ten colony. This act will most certainly have the final unifying effect on the ranks of labor and if our rights must be defended with guns and our wives and children saved from bullet and flame by us with arms, let us not shirk the responsibility. To many of us have always opposed direct action in the past, the bitter lesson has been written in the blood of the innocents of Ludlow, and seared into our minds by their burning tent homes that labor must use every weapon at our command, even unto the high power rifle and machine gun, if we will win our battles. Thugs and assassins murder our comrades in safety, protected by the laws and go unpunished for their lawless deeds. And so we are going over to the direct actionists by the hun-
3028 dred now. Their philosophy is the only visible solution.

We would be worse than fools and cowards if we sat idly by and be clubbed by the militiamen, assasinated by deputy sheriffs and our wives and children murdered in their homes by hired assassins. In our future strikes our tents will and must be protected by high power rifle and the punishments the state militia refuses must be meted out by ourselves.

Anarchistic! Our enemies will cry. No, sir. It is simple justice opposing the anarchy of the mine owners. Until labor unites at the ballot box and the mine, mills and factories are restored to the people and the need of militiamen and hired thugs by our plutocratic masters is passed, these battles will of necessity be fought and [be] may as well meet the issue. We have conducted peaceable strikes and been murdered and clubbed in our passiveness. The professional gunman is abroad in the land and where a strike is in progress they gather, spreading murder and disorder, under obligation to no law but their own fiendish will, knowing no restraint but the mine owners' will, and these conditions must be met. Protest meetings and resolutions to congress have accomplished nothing. The murder of our brothers has gone merrily on. Appeal to constituted authority has been in vain.

And so we are face to face with a reality, not a theory, and it must be met with something beside denouncing protests, indignant resolutions and meaningless platitudes. Every rifle turned upon us and our camps and every blazing torch applied to our homes must be met with rifle and blazing
3029 torch, or the world will rightly judge us as spineless caricatures of men. Why should we dodge the issue and rant about law and order and rights of citizens when law and

order leagues and citizens' alliances are murdering our brothers, desecrating our homes and burning our wives and children and are defended by their dastardly deeds by the powers of the state governments. And so we have the issue to meet and let us meet it like red blooded men. We can put down the anarchy of capital only with the same measures employed against us.

GEO. R. MOORE."

3030 Mr. Drinker: I will have to appeal to your Honor for clemency in connection with the time. We had our witnesses on the question of damages, which is the only thing left, we had arrangements for them to come today. We had no idea we would not go on with this other evidence until at least the noon hour. It would be most prejudicial to our orderly presentation of the case to have to put them on now. I really think, if we could have the two hours to get our data together, we could save time after lunch.

The Court: We will take a recess for ten minutes. By that time you will have to have some evidence to put on.

Mr. Drinker: We put so much in the record, your Honor. I have been perfectly sincere in trying to expedite things. I can assure your Honor that it will not take more than today to present that testimony. If we can have a recess until after the noon hour. I would appreciate it greatly if we could have that. It will greatly prejudice our presentation of the case to push us into that mater in this way.

The Court: You were not pushed into it. You had all this time to make this preparation. You have ten days since the beginning of the trial.

Mr. Drinker: We have witnesses on the question of damages whose time is very valuable and we could not keep them here for ten days.

The Court: There is no reason why you could not.

Gentlemen of the Jury, under the admonition the court has heretofore given you, which you will strictly observe,
3031 we will take a recess for ten minutes.

(Whereupon, a recess was taken from 10:50 A. M. to 11.05 A. M.)

The Court: Resume the trial.

Mr. Lucas: The one remaining witness of the local circumstances not covered by the stipulation is Charles Dalton

The marshal's return is that he cannot be served, and we offer that to prove that he is not within the jurisdiction.

Mr. Warrum: It may go in. You may offer his testimony.

Mr. Lucas: We offer the testimony of Charles Dalton on the previous trial contained in the old record, pages 1772 to 1775:

"CHARLES DALTON, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination.

By Mr. Hull:

Q. What is your full name? A. Charles Dalton.
Q. What is your business? A. Carpenter.
Q. What was your business in 1914? A. Carpenter.
Q. You were also reporting for the Little Rock Gazette?
A. That was on the side.
Q. You lived in Hartford? A. Yes, sir.
Q. How long had you lived there?
A. I had lived there 18 years.
3032 Q. Do you remember the day of the big battle there at Prairie Creek? A. Oh, yes.

* * * * * * *

(Recess)

Q. Mr. Dalton, you say you remember the day of the big battle out there? A. Yes, sir.
Q. Did you go out to No. 4 that morning?
A. I think it was,—no, I didn't go out in the morning; I don't think so, it must have been about twelve o'clock when I went out.
Q. With whom did you go? A. I went with Lingo.
Q. Is that Tom Lingo?
A. Yes, sir, the insurance man.
Q. You went in his buggy?
A. Yes, sir, I went in his buggy.
Q. Did you meet any men coming in toward Hartford on your way out to No. 4?
A. Oh, yes, they were scattered all along, these squads of men.
Q. And did you notice any identifying marks that they had when they had any?
A. No,—I don't think I noticed any identifying marks on those we met.
Q. Did you see any men with white handkerchiefs at all out there?

A. Yes, sir, I saw some men with white handkerchiefs.
Q. Where were they?
A. Around the arm,—at Frogtown.
3033 Q. That was at Frogtown?
A. Yes, sir.
Q. How far did you get toward the scene of the trouble?
A. We got to Frogtown, that must be three quarters of a mile from No. 4, and at that time Mammoth, just over to the left, was burning.
Q. Mammoth Vein No. 1?
A. No. 4,—no, No. 1, yes.
Q. Now, how many people were there around Mammoth Vein No. 1?
A. There is a ridge that overlooks the mine, and it was crowded. Oh, three or four or five hundred people; a tremendous big crowd there.
Q. Did you go on beyond Frogtown that trip?
A. No, sir, we didn't go beyond, we went to look at the fire, and I took some notes, and we went back in.
Q. Did you recognize anyone that you knew out there on that trip?
A. Oh, I recognized a good many, but I have forgotten who they were.
Q. You could not state now the names of any men that you remember seeing out at Frogtown about noon on the day of the battle?
A. Well, one man came out, as far as I can remember, stepped out and waved at us, and motioned at us, and he asked where we were going, and we said we thought we would go to No. 4, and my hearing is a little bad at times, and I didn't hear what he said exactly, but Lingo stopped and turn-
3034 to me and said, "Well, we will go over and see the Mammoth Vein", it was burning, we could see over the hill the smoke and flames, but we couldn't see the mine itself, and we turned and went over, and I think I remember that man.
Q. Who was it? A. Jeff Mealer.
Q. Do you know where he worked?
A. At No. 4 Central.
Q. That is in Hartford?
A. Yes, sir.
Q. Did you go back again that day later in Mr. Lingo's car? A. Yes, sir, later in the evening.
Q. What did you see out there then?
A. Well, it was practically deserted. There were a few sightseers around but there was nothing left to see but a smoldering mass of debris.

Q. Where was that?
A. At No. 4 Prairie Creek, and everything that was made of wood had been burned. And the pit mouth, the cribbing of the pit mouth, was in fire, but we got pretty close to the pit mouth and looked, and I remember there were two or three sightseers around there, and some children, and I wanted them to keep away from there, it was liable to crumble and fall in.
Q. Do you remember seeing anyone there at that time that you recognized?
A. No, it was practically deserted, they had all come in by that time.
3035 Q. Now, Mr. Dalton, I will ask you if you remember some time about along in November of seeing on the trees, or on some posts in Hartford, a sign posted up there that referred to this trouble? A. Which November?
Q. In November, 1914, the November following this date?

Mr. Warrum: The defendants severally renew their objection to this testimony, as it was after the suit was instituted.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. No, but there was one in 1916.
Q. How is that?
A. There was a small placard put up in 1916.
Q. That was last year?
A. Yes, sir.
Q. Do you know what that placard said?

Mr. Warrum: The defendants severally object to the introduction of this evidence, for the reason that it occurred more than two years after the institution of this suit.

The Court: I think I will sustain that objection.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Mr. Hull: I just want to show your Honor what that placard was (showing court a paper).

The Court: Let the record show,—do you expect to follow this with proof of the person who put this notice
3036 up?

Mr. Hull: We never identified who put it up yet.

The Court: The objection will be sustained.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Mr. Hull: That is all.

Mr. Covington: No questions.

(Witness excused.)"

Mr. Drinker: We want to call Mr. John Shaleen. This witness' testimony was offered in the stipulation which I understood covered the first time he was called. He was recalled, and I want to ask him about that.

The Court: Very well. Proceed.

JOHN SHALEEN, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Your name is John Shaleen?

A. Yes, sir.

Q. You are the same John Shaleen who testified before?

A. Yes, sir.

Q. When did you first go down to Prairie Creek after the riot? A. Some time in October.

Q. When was the last day that Arch Caldwell was down there, do you know?

A. No, sir, I don't. I don't think he was down there very long after I want down there in April.

Q. About when did he leave?

3037 A. Well, I don't remember.

Q. Was he there after the end of May?

A. I think he was.

Q. Was he there in June?

A. I hardly think so.

Q. How many coal diggers did you have down there when John Cameron left as superintendent?

A. Well, we had around thirty or forty, I should judge.

Q. When did John Cameron leave as superintendent?

A. I think around the first of July.

Q. The first of July?

A. Somewhere around there.

Q. To refresh your memory, didn't you testify in the previous trial, in answer to this question, as follows:

"Q. Don't you know that June 6th was the day that John Cameron left as superintendent? A. Yes, sir."

Is that correct?

A. If I testified to that, that was correct.
Q. How did you find that out at the previous trial?
A. I just remembered it.
Q. You remembered it six years ago?
A. Yes, sir.
Q. Did you attend the trial of Riley Bailey?
A. Yes, sir.
Q. You were mine foreman then?
A. Yes, sir.
3038 Q. And you were a witness?
A. Yes, sir.
Q. Did you take the time books of the mine to that trial?
A. Yes, sir.
Q. Do you remember what he was charged with?
A. Yes, sir.
Q. What was he charged with?
A. Insulting a girl.
Q. Who? A. Miss Johnson, I believe.
Q. Alberta Johnson?
A. Yes, sir.
Q. She was Uncle Charley Johnson's daughter?
A. I don't know whose daughter she was.
Q. No, there is no Uncle Charley Johnson. You don't know whose daughter she was?
A. No, sir, I don't. I may have known at the time.
Q. Were you there when she testified?
A. Yes, sir.
Q. What did she claim that Riley Bailey did?

Mr. Warrum: If the court please, that calls for a conclusion and is improper. If she did testify, she is not a party to this suit, and her testimony could not bind the defendants.

The Court: I would hardly think so. Whatever injury happened to her would not be recoverable in this case.

Mr. Drinker: It is just to show a part of the general plot.

The Court: I don't think it is necessary at this late
3039 stage to go into such matters as that.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

Q. Was Riley Bailey at the place that she charged him with being at that time? A. No.

Mr. Warrum: If the court please, that calls for a conclusion.

The Court: Oh, let it stand.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

Q. Who was the man that participated in the event that she referred to as the basis of her charge? If you don't know, say so. A. I don't know.

Q. You don't know personally? A. No, sir.

Mr. Drinker: That is all. Cross-examine.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness excused.)

Mr. Drinker: There are one or two little items I want to offer. If your Honor please, I am not playing for time. When I get really done with what I want to do, I will say so, and take my medicine although I want additional time very much.

I want to offer from Plaintiff's Exhibit 207, found on page 2467 of the old record, so much of page 75 as shows that Clint Burris was selected check committeeman on March 10th, 1914.

"So much of page 82 as shows that the motion prevail-
3040 ed that Avon Sylesberry and Sam Brown "Be expelled from the organization and published in the Journal", being minutes of meeting of April 7, 1914.

So much of Exhibit 201, being the minute book of Local 1814, on pages 2464 and 2465, so much of page 300 thereof as states "Moved we advertise Brad Hobson and Earl Nixon as scabs, as they are working at Bache-Denmans".

C. H. FINLEY, recalled as a witness, having been previously sworn, testified further as follows:

Direct Examination

By Mr. Drinker:

Q. Mr. Finely, you are the receiver of the plaintiff companies in this case?

A. Yes, sir.

Q. Who did you succeed?

A. Mr. Hilliard, and I together succeeded A. S. Dow.
Q. Whom did he succeed?
A. He succeeded Mr. Bache.
Q. Mr. Bache was originally appointed receiver?
A. Yes, sir.
Q. When were you appointed receiver? October 5, 1916?
A. I believe that was the date.
Q. What were you before that? What were you in July, 1914?
A. I was Vice-President and auditor of the various companies.
Q. The same position in each one of them?
A. Practically the same. There may have been one or two companies that it was a little different.
3041 Q. Did you have anything to do with the mining business of these companies?
A. No, sir. My work was mostly accounting.
Q. Mostly accounting?
A. Yes, sir.
Q. Did you have anything to do with the sale of coal?
A. Well, no.
Q. Were you familiar with the properties?
A. Yes, sir, in a general way.
Q. Had you often visited the properties?
A. Yes, sir.
Q. About how much of your time would you say you spent around the mines and how much of it in their office prior to 1914? A. About half and half.
Q. For how long had you been connected with the companies?
A. I had been with these companies since 1906.
Q. Did you have an office down at the mine?
A. Yes, sir, there was an office at each mine with a clerk in charge.
Q. What did you have to do with the purchase of machinery, and equipment, and so forth?
A. Nothing more than to handle the bills for the payment of it, if it was bought after I was with the companies.
Q. All the bills for the purchase of equipment and stuff that went into the mines passed through you?
A. Yes, sir.
Q. And it any equipment was sold that passed through you?
3042 A. Yes, sir.
Q. Did you go down inside the mines?
A. Yes, sir, occasionally.
Q. About how often before July, 1914, on an average?

A. Oh, possibly once a month or once every two months.

Q. So that you were familiar with the equipment inside and outside of the mines?

A. Yes, sir.

Q. Were you there in June and July, 1914?

A. Yes, sir. I don't know that I was in all the mines during those months, but I was in No. 4 during June or July.

Q. And before that you were in all of them off and on once a month, you say? A. Yes, sir.

Q. Were you down at the mines during June and July?

A. Very frequently, yes, sir.

Q. About how often?

A. Practically every day during June and July up to the middle of the month.

Q. What were you doing down there then?

A. Mr. Bache was away a great part of the time, and I was doing all I could to keep things moving.

Q. Where was Mr. Denman?

A. Mr. Denman was in Pennsylvania.

Q. He left here before the first of the year, did he?

A. Yes, sir.

Q. Are you familiar with the equipment that was in
3043 Prairie Creek No. 4, Mammoth Vein No. 4 and Coronado?

A. In a general way, yes, sir.

Q. That is, you were familiar with the way it was before July 17th? A. Yes, sir.

Q. Now, I wish you would state what the equipment at Prairie Creek No. 3 and 4 [—]; if you wish you can refresh your memory from any memorandum that you yourself have made?

A. I would like to use a memorandum merely so I will not overlook anything.

Q. In connection with that, I want your answers to cover what articles you remember were there and know about, but in that connection you can refresh your memory by looking at your memorandum?

A. The purpose of having a memorandum is so I will not omit any item that I do know was there.

Q. You can look at your memorandum and state what was the equipment. I don't mean to go into details, but what was the major items of equipment at Prairie Creek No. 3 and 4 before the battle.

A. At mine No. 4 there was a new tipple which had been constructed the year before.

Q. Was that the one we saw the picture of yesterday?

A. Yes, sir.

Q. With the Wabash car on it?
A. I don't remember that.
Q. All right.
3044 A. That tipple was built out of creosoted pine timber. It was corrugated roofing. Besides the tipple there was a boiler house which was also new, a frame work house covered with corrugated iron roofing. There were boilers and their settings with all the necessary fittings. There was a blower system there used to force draft through. There was an engine house, in which stood the hoisting engine, the first motion engine, with cylinders about 18 by 36 as I recall it. There were drill holes for pipes and wires to heat the mine. They had a water system to furnish water for the boilers.
Q. What do you mean by a water system?
A. Pipe line from the pump station which stood on the creek.
Q. How far away was that?
A. Perhaps half a mile away.
Q. Pipes running between?
A. Pipes between there and the tank at mine to hold water.
Q. Go on?
A. There was a steam line, a five inch line, as I remember it, that ran from the boiler house at No. 4 shaft to the hoisting engine and fan house at Goo-goo Plane up the hill. That pipe line was covered with pipe covering. There were miscellaneous tools, pumps, washers, pit cars, hoisting engines, hoisting pages, electric motors and wiring, supplies. They had a blacksmith shop and machine shop combined that was better equipped than any of our other shops, having more machinery in it. There was a mule barn large enough to accommodate 30 or 40 mules.
Q. What were the mules used for?
3045 A. The mules were used for haulage inside the mine.
Q. To haul the mine cars?
A. Yes, sir.
Q. Go on?
A. Inside the mine was the necessary development work consisting of planes, entries, partings, and so forth, supply house. Inside the mine there was a Sullivan electric mining machine.
Q. What is a mining machine?
A. Mining machine is a machine that is used to undercut the coal so that it can be shot down without having to use so much powder and make more lump coal.

Q. That is, they cut six inches or a foot underneath the bottom of the bench?

A. It cuts about six feet underneath, with what they call a turf, about five or six inches.

Q. You mean that goes in for six feet?

A. Yes, sir.

Q. But it cuts a place about six inches wide?

A. Not over six.

Q. Go on?

A. At No. 3 there was a boiler house with boilers and a hoisting engine, shieve wheels, wire rope. At Goo-goo Plane there was a hoisting engine and shieve wheels, rope, fan, engine, all the necessary fittings. Inside the mine there were pumps to handle the water out of the mine.

That is about all that I can recall at that mine.

Q. How much of that was left after July 17th?

3046 A. Well, there was very little.

Q. You went down there after the battle?

A. Yes, sir.

Q. As soon as you considered it expedient?

A. Well, I went down the first time I had any business down there. I don't remember when it was.

Q. How much of it was left down there then, of what you have read, what you have testified to?

A. Well, I don't believe I could name the various things but the salvage value of what was left there was very little, compared with what the original value was.

Q. What do you mean by "very little"? Was there any thing there of any practical use?

A. Oh, yes, we gathered up some pipe there and sold it and got a few rails out of the mine that brought a little money.

Q. Was any of the machinery any good?

A. The machinery was ruined.

Q. The machines and the boilers and things, were they there?

A. The mining machine was inside the mine. It was completely ruined. It wasn't any good when we got it out.

Q. How far down in the mine was it?

A. It was in the first west after the Goo-goo Plane as I recall it.

Q. How deep under the ground were these things?

A. About 250 feet, something like that.

Q. The boiler and hoisting engine were way down in the bottom of the mine?

3047 A. No, sir, they were on top.

Q. At Prairie Creek No. 4?

A. Yes, sir.
Q. What about the pump? That is what I meant?
A. The pumps were below.
Q. They were below?
A. Yes, sir.
Q. The boilers and engines and those things were in what condition after the battle?
A. They were damaged by the fire.
Q. What did you do with them?
A. They are still there, I guess.
Q. They are not in use?
A. No, sir, the leases were cancelled.
Q. When the leases were cancelled, did the equipment go with the leases or what happened to it?
A. As I recall it, that equipment was supposed to come to us.
Q. Did you get it?
A. We got very little of it.
Q. Do you know what the whole salvage amounted to that you made out of that?
A. I could not estimate it.
Q. You could not say accurately?
A. No, sir.
Q. Have you any idea of about how much?
A. Well, I should say it was under $5,000.00, but I couldn't be positive.
3048 Q. Was it over $7,500.00?
A. I think it was under $5,000.00.
Q. That is the best of your recollection?
A. Yes, sir.
3049 Q. Now, take the next mine, Mammoth Vein No. 1, and tell what the equipment was there; don't go into great detail.

The Court: Does this witness know what was there and what the reasonable market value of this property was?

Mr. Drinker: No, sir, he will tell what was there, and the other witness will put on the value.

A. At Mammoth Vein No. 1 there was a well opened and timbered slope with two air courses, one on each side.
Q. Was it an air course?
A. An air course is a narrow place driven parallel with the slope to furnish ventilation.
Q. That is cars and things go up and down the slope, and there is another hole runs parallel with it, what we call the

jelly of the cake, so the air can be blown in and around the mine?

A. Yes, sir, and the air courses are used as traveling ways for the men on entering and leaving the mine.

Q. Go on.

A. There were two tipples at Mammoth Vein No. 1, one located on the Midland Valley Railroad, equipped with shaking screens, and shaker engine, scales on the tipple, and tracks. The Rock Island tipple also had shaking screens, tipple scales, tracks, shaker engine. At the Midland tipple there was an engine house covered with galvanized roofing. Inside the boiler house there was a first motion Litchfield hoisting engine, cylinders about 18 by 36 inches, with its concrete setting, and steam piping and fittings. Wire rope. Also in that engine house there was an Ingersol-Rand air
3050 compressor with a capacity of about 1100 cubic feet per minute, with its concrete settings and steam pipe and steam separator. Also all necessary connections. Also a Norwalk air compressor with settings, fittings and connections. There was an air receiver, a feed water heater, steam pipings, traps, boiler house of frame construction with sheet iron roof and sides. Three boilers in this boiler house and feed water pump, valves, steam pipes, trappings and so forth. There was a small hoisting engine there that was used to haul coal from the tipple up to the boiler house, and a coal bin at the boiler house. There were two ventilating fans at this mine, one in each air course. One of them was a 16 foot fan, and the other was 12. Each fan had its engine and fan house. There were two railroad track scales, one at the Midland Valley tipple and one at the Rock Island tipple. They had pit cars, mine tracks, pumps, air lines and water lines inside the mine; pumping plant to furnish boiler water that was about one mile away from its source of supply. There was a large water tank there, and a frame blacksmith shop with tools, forges, and supplies. Also a supply house with considerable quantity of supplies in it. Between the Midland Valley tipple and the Rock Island tipple there was a tram road, small steel, perhaps 25 pound steel, with its necessary gradings and ties, and a haulage engine, and rope that dropped the coal from the Midland Valley tipple over to the Rock Island tipple, where they loaded on the Rock Island rails. At the Rock Island tipple there was a boiler house and engine house combined, in which there was an 80 horse power boiler, and
3051 endless rope engine, which handled the railroad cars from below the tipple to above for loading. The en-

gine had concrete foundation, the boiler was a masonry setting. There was about 3,000 feet of three-quarter inch rope in connection with that endless rope engine.

That is all I recall at that mine.

Q. How much, if any, of that was left after the battle?

A. Well, the salvage that we got that mine was even less than No. 4, as I recall it. All the Midland Valley tipple was destroyed. The boilers were damaged, and the engine was damaged; the air compressor was damaged, and the Rock Island tipple was a total loss,—the hot fire damaged all that machinery until it could not be used without expensive repairs. Some of it was sold, and some of it is still there, worthless.

Q. Now have you finished with Mammoth Vein No. 1?

A. Yes, sir.

Q. In your previous testimony just now, you have described Prairie Creek No. 3 and No. 4 together, have you?

A. Yes, sir.

Q. They were operated at this time as one mine?

A. Yes, sir.

Q. And they had previously been two separate mines, and were connected underground? A. Yes, sir.

Q. Now, go to Coronado. How far away was the Coronado from these other mines?

A. Coronado was two and a half or three miles, I believe, from No. 4. Coronado was on the Frisco Railroad, and
3052 No. 4 Prairie Creek was on the Midland Valley.

Q. Now tell what was at Coronado?

A. Coronado was a shaft mine, with a tipple capable of handling twelve to fifteen hundred tons of coal a day. They had a coal washer at that mine, in which the small sizes of coal, perhaps 50 per cent of the production, went through the Washer to have the dirt taken out of it before it was sold. This washer was a building as tall and as large as the tipple itself, to look at it. It had in its elevators, jigs, and screens—

Q. What is a jig?

A. A jig is a shaker that shakes the coal while the water is running over it. A cable ran that machinery, tanks to hold the water, and pumps as necessary, and pipes. The boiler house at that mine had five boilers in it, not as large as the boilers at No. 4 and No. 1, but there were more of them. They set in masonry, and had the necessary steam pipes and connections, and had feed water pumps and feed water heaters, and the engine house was galvanized iron sides and roof, as also was the boiler house. In the engine house there was a hoisting engine, Litchfield first motion engine 18 by 36, concrete foundation, steam traps, pipings and fitting, and all nec-

essary connections. They had a pond and water supply system with a pipe line running to it, and pump to handle the water. In addition to the main hoisting engine they had a small 10 by 12 geared hoisting engine that they used for handling the rock. They had a supply house there with miscellaneous machinery, tools and supplies in it. There was an air compressor there, Ingersol-Rand manufactured, with
3053 its foundation, steam pipes, connections and valves, and with an air receiver. There was a drill hole nearby through which a rope ran down into the mine to handle the coal from the west dip entries. The engine that handled this rope was on top. It was a 10 by 12 geared hoisting engine with necessary rope and steam connections and fittings. At the head of the plane there was another hoisting engine that was an 8 by 10 geared friction clutch engine, with its necessary pipe connections and fittings; sheave wheels, fan house, with 12 foot fans and fan engine, and steam pipe fittings and lubricator, and so forth. There was a barn there, stable we called it, and a lot fenced in, a barn large enough to accommodate 20 mules, and store feed for them. There was a store building at that mine. A foreman's dwelling; and that is about all I can recall.

Q. How much of that was left after the battle?

A. There was nothing left in the way of buildings; the machinery was all damaged.

Q. Was it of any use, any of it?

A. Some we sold, some of it.

Q. Do you know what you got for everything at Coronado, approximately, an outside figure?

A. Not over four thousand or forty-five hundred dollars, I am sure.

Q. And do you know what you got for the salvage of Mammoth Vein No. 1, outside figure?

A. I would say not over $4,000.

Q. Now, take Little 6, Mammoth Vein No. 6, what was there? A. That mine was not destroyed.

3054 Q. That mine was not destroyed?

A. The lease was canceled.

Q. The lease was canceled? A. Yes, sir.

Q. Now take the Dallas mine, what was there?

A. The Dallas mine was a smaller mine, the damage there was slight as compared with the other mines, because the fire was extinguished before it had done much damage, but one end of the tipple was burned off, and the rock trestle burned, and the boilers there were dynamited. I think that rendered them worthless, I don't believe they have ever been put in use since.

Q. Do you know—you said the Rock Island tipple at Mammoth Vein No. 1 was new, did you?

A. It was not over 4 years old, it may not have been that much.

Q. Now, Mr. Finley, in the operation of these companies to the outside world, was any distinction made between the different companies?

Mr. Warrum: What difference does it make? The defendants object to this question because it makes no difference.

Mr. Drinker: It is on the question of misjoinder of parties; we want to make the record the same as it was before.

The Court: It doesn't make any difference about that, but let him answer this question.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

Q. What do you say?

A. I have not answered yet.

3055 Q. Please answer.

A. Very few people that I came in contact with knew anything about which company owned which mine, they all referred to it as Bache-Denman Company, no matter what mine they were talking about.

Q. Were these companies operated as a unit?

A. Yes, sir.

Q. They each used things that belonged at other companies, as the occasion required?

A. Why, if one company or if one mine had a piece of machinery which it was not using, that another mine could use, it was sent over there, and an appropriate record made of it.

Q. Now, Mr. Finley, did you make, from the books of the company, a list showing the strikes and the idle days at the various mines during 1913?

A. Yes, sir, I did, but I have not it with me.

Q. You have not it with you? A. No, sir.

Mr. Drinker: We will get it this afternoon.

The Court: Proceed.

Cross-Examination

By Mr. Warrum:

Q. Some of this equipment you testified to belonged to the Cherokee Construction Company?

A. At No. 4 it did.

Q. And some belonged to the Kali-Inla Coal Company?
A. Yes, sir.
Q. Now, when you say they were operated as a unit,
3056 the Kali-Inla Coal Company operated union, did they not? A. Yes, sir.
Q. It was a corporation, however? A. Yes, sir.
Q. And you were connected with that corporation?
A. Yes, sir.
Q. And are now? A. Yes, sir.
Q. You have one share of stock in it?
A. I believe that is right.
Q. And Mr. Bache is president? A. Yes, sir.
Q. Are you a director also? A. I think so.
Q. And you are operating there with union labor at Kali-Inla now? A. Yes, sir.
Q. Bache-Denman Company holds 416 shares of the capital stock of the Kali-Inla Company, does it not?
A. At one time they did.
Q. They held it till 1918, did they not?
A. In 1917, as I recall it.
Q. 1917, and disposed of it in 1917?

Mr. Drinker: I object to that as not material to this case, what was done in 1917?

The Court: I can not see that it is very material what stock was held in that company, there was no destruction there.

Mr Warrum: No, but they owned part of this equip-
3057 ment, and in addition to that, here is a receiver of one of the companies suing here, owning the controlling stock of the Kali-Inla mine, and three years after the alleged destruction of this mine, and they allege this conspiracy, of which the Kali-Inla was a party.

The Court: I don't think that is material.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Redirect Examination

By Mr. Drinker:
Q. These items of machinery that you say were owned by the Cherokee Construction Company and Kalin-Inla Company, how did you happen to have them, under what arrangement?
A. They were there under lease, and the lessee was responsible for the proper use and return of that machinery at the expiration of the lease.

Q. So that you had to give that machinery back at the end of the lease, or pay for it? A. Yes, sir.

The Court: Stand down.

(Witness Excused.)

Mr. Drinker: I am not sure whether we offered the deposition of William J. Clinton, found on pages 2347 to 2349 of the old record, but if not, we offer it now, together with the exhibits contained on page 2349.

The Court: Very well.

Mr. Drinker: And the same with the deposition of John J. Morris, found on pages 2349 and 2350 of the old record.

3058 The Court: Do these people come under your stipulation?

Mr. Drinker: These are depositions, the stipulations just covered people whose testimony was in the former trial, and these are depositions. We also offer the deposition of Thurman Looper, found on pages 2350 to 2352 of the original record.

"WILLIAM J. CLINTON

Direct Examination

By Mr. Kobbe:

Q. Where do you live?

A. 364 Lenox Avenue, New York City.

Q. Did you appear here pursuant to subpoena served upon you? A. Yes, sir.

Q. By whom are you employed?

A. Remington Arms Union Metallic Cartridge Company.

Q. At which office are you employed?

A. 29 Warren Street.

Q. What is the nature of your employment by the Remington Arms Company? A. Assistant shipping clerk.

Q. And as assistant shipping clerk of the company what are your general duties?

A. To ship goods to customers and make receipts out for shipments, domestic shipments.

Q. I show you United States Express Company receipt dated June 10, 1914, one case, consignee John Mastell, Hartford, Arkansas, valuation $230, and I ask you in whose handwriting that receipt is?

3059 A. It is in my handwriting.

Q. To whom did you deliver the case of goods referred to in Plaintiff's Exhibit A, F. K. H., June 18, 1915?

A. To the express driver.

Q. And by whom was the instrument receipted?

A. By the driver of the United States Express Company.

Q. I show you United States Express Company receipt dated June 18, 1914, for five cases, valued at $300, consigned to Oscar Layton, Hartford, Arkansas, and ask you in whose handwriting this receipt is made out?

A. My handwriting.

Q. To whom did you deliver the five cases referred to in the receipt offered in evidence, Plaintiffs' Exhibit B, F. K. H. June 18, 1914? A. To the express driver.

Q. Referring to the case of goods in Plaintiff's Exhibit A, F. K. H., will you state where you delivered the case to the express company? A. At 29 Warren Street.

Q. Referring to Plaintiffs' Exhibit A, will you state what the case referred to in the exhibit contained?

A. Well, a case of rifles.

Q. Referring to Plaintiffs' Exhibit B, dated June 18, 1914, will you state what the five cases referred to in the receipt contained?

A. Four cases of cartridges and one case of rifles.

Q. Do you know what kind and size of rifles were in-
3060 cluded in the shipments of June 10, 1914, referred to in Plaintiffs' Exhibit A?

A. 10 Model, 8A 25 calibre.

Q. Do you know the kind and size of rifles and cartridges included in the shipment dated June 18, 1914, referred to in Plaintiffs' Exhibit B?

A. 2,000 cartridges, 25 Remington metal case; 1,000 cartridges, 30 Remington metal case; ½ thousand cartridges, 35 Remington metal case; 1/5 thousand cartridges, 32 Remington metal case; 1/10 thousand metal cartridges, 30 Springfield, O 3 metal case; and 10 model 14 A, 25 calibre.

Q. To whom was the case referred to in the express company receipt dated June 18, 1914, Plaintiffs' Exhibit A, consigned? A. John Mastell, Hartford, Arkansas.

Q. To whom were the five cases referred to in the United States Express Company receipt, dated June 18, 1914, Plaintiffs' Exhibit B. F. K. H., consigned?

A. Oscar Layton, Hartford, Arkansas.

(Signed) WILLIAM J. CLINTON.

Plaintiffs' Exhibit 'A'

United States Express Company.

Received from Remington Arms-Union Metallic Ctge. Company New York, N. Y.

Date
6/10/14 one (1) case John Mastell, Hartford, Arkansas Vose 492

Value $2350.00

3061 Plaintiffs' Exhibit 'B'

United States Express Company.

Received from Remington Arms-Union Metallic Ctgl. Company New York, N. Y.

Date
6/18/14 Five (5) cases Oscar Layton, Huntington, Arkansas Voce 492

Value $300.00

JOHN J. MORRIS

Direct Examination

By Mr. Kobbe:

Q. State your name? A. John J. Morris.

Q. Where do you reside? A. Great Neck, Long Island.

Q. Do you appear here pursuant to subpoena served upon you? A. Yes, sir.

Q. By whom are you employed?

A. Remington Arms-Union Metallic Cartridge Company.

Q. What is the nature of your employment with the Remington Arms Company? A. Shipping clerk.

Q. As shipping clerk what are your duties?

A. To ship goods ordered by customers to them, to deliver the goods to transportation companies and receive the receipts from such transportation companies for such goods.

3062 Q. I show you receipt dated June 22, 1914, of American Express Company, for two cases consigned to Oscar Layton, Hartford, Arkansas, and ask you in whose handwriting this receipt is made out?

A. It was made out by me.

Q. To whom did you deliver the two cases referred to in the American Express Company receipt dated June 22, 1914, Plaintiffs' Exhibit C, F. K. H.?

A. American Express Company's driver.

Q. By whom is the receipt of American Express Company dated June 22, 1914, Plaintiffs' Exhibit C, signed?

A. By the American Express Company driver.

Q. To whom were the two cases referred to in the American Express Company's receipt dated June 22, 1914, Plaintiffs' Exhibit C, consigned?

A. Oscar Layton, Hartford, Arkansas.

Q. Will you state the contents of the two cases referred to in the American Express Company's receipt, dated June 22, 1914, Plaintiffs' Exhibit C, consigned to Oscar Layton, Hartford, Arkansas?

A. Contained 1500 cartridges, 25 Remington M. C.

Q. At what place did you deliver the two cases referred to in the American Express Company's receipt dated June 22, 1914, Plaintiffs' Exhibit C, to the express company?

A. 29 Warren Street.

(Signed) JOHN JOS. MORRIS.

3063 Plaintiffs' Exhibit 'C'

American Express Company.

Received from Remington Arms-Union Metallic Cartridge Company, New York, N. Y.

Two cases (2) Consigned to Oscar Layton, Hartford, Arkansas.

Charses C J. HOFFMAN. 2

THURMAN LOOPER

Direct Examination

By Mr. McDonough:

Q. State your name, please? A. Thurman Looper.

Q. Your initials are W. T.? A. Yes, sir.

Q. Where do you live? A. Webb City.

Q. Are you a son of O. T. Looper? A. Yes, sir.

Q. What do you do in Webb City?

A. Work in the mines.

Q. What kind of work do you do in the mines?

A. Shoveling.

Q. In what mine are you working?

A. Hurry Up Mining Company.

Q. State whether or not you were living in Arkansas and near Midland, Arkansas, in 1914?

A. I was, yes, sir.

3064 Q. What were you engaged in while you lived in Arkansas in 1913 and 1914?

A. I was working in and around the mines.

Q. What kind of work did you generally do in the mines, or about the mines?

A. I generally worked shift work.

Q. State whether or not you were employed by the Bates-Denman Companies about the time they were making an effort to open up Mine Number Four on the open shop plan?

A. I was, yes, sir.

Q. Who employed you? A. My father.

Q. What kind of work were you employed to do?

A. Guarding around the mine.

Q. State whether or not on Sunday the 5th of April, 1914, a committee composed of John Manick, Vesta Howard, Clint Burris, and others came to you to talk to you, and did talk to you? A. Yes, sir.

Q. Give the names of all that you remember in that committee?

A. Vesta Howard, John Manick, Clint Burris, Charley Johnson; I believe that is all I can call to mind.

Q. Were those men union miners? A. Yes, sir.

Q. I wish you would state what they said to you?

A. Well, they was persuading me to quit work.

Q. What reason did they give you for wanting you to quit work?

A. Well, I don't know hardly how to answer that.

3065 Q. Well, they knew you were working for the company, did they? A. Yes, sir.

Q. They knew the company was endeavoring to open up the mine on the open shop plan? A. Yes, sir.

Q. What did they say, if anything, about a meeting that was going to take place the next day?

A. Well, they told me they was going to have a meeting on the next day; that everybody in the surrounding country would be there.

Q. How many people did they say would be at that meeting?

A. I believe somethiug like two thousand people was what they said.

Q. At what place did they say the meeting would be held?

A. They didn't say.

Q. Was anything said about a school house? A. No, sir.

Q. What was said by them, if anything, whether they were going to stop that work the company was then engaged in at that mine? A. They said they was going to stop it.

Q. State whether or not they said they would or would not have trouble?

A. They said they were expecting to have trouble.

Q. What did they say about the trouble, as to what it would be, or the nature of it?

A. Well, they didn't say about the nature of the trouble; they were insisting that I quit; they said they wouldn't
3066 like to see me there, and wished I would quit, so I wouldn't be there when this trouble occurred.

Q. Had you been a union miner before that?

A. Yes, sir.

Q. Were you a member of the union at that time?

A. No, sir.

Q. What did they say about your obligation to the union to quit, if anything?

A. Well, I don't remember whether there was anything said about that or not.

Q. Mr. Looper, state whether or not you did quit?

A. Well, I worked that day; they wanted me to quit at that time, it was about noon, and I refused to quit, but after my shift was off that day I quit that night.

Q. What was your reason for quitting?

A. Well, I didn't want to be there; I knew the trouble was coming, and I didn't want to be there when it came up.

Q. State whether or not you feared personal violence to yourself? A. I did, yes, sir.

Q. You were not working then on Monday? A. No, sir.

Q. Mr. Looper, did you work at those mines any time after that? A. No, sir.

Q. You were not there then at the time of the battle on July 17th? A. No, sir.

3067 Mr. Drinker: I am not sure that I offered Exhibits 177 and 178 of the old record, found on pages 2380 and [2380]. I think I offered one of them, but my mark does not show which one, and I wish at this time to offer them.

"Exhibit 177.

Audit (in lead pencil).

U. M. W. of A. Local Union No. 1565.

October 2, 1917.

To J. W. Howard, Treasurer:

In accordance with a vote of this union, you are hereby authorized to pay to C. Burris the sum of 2.00 Dollars and

..... cents, and this shall be your voucher for the same.

A. G. McGRAW, R. S.

Countersigned by
John Manick, Prest.

No. 93.

Exhibit 178.

Audit (in lead pencil).

U. M. W. of A. Local Union No. 1565.

October 2, 1917.

To J. W. Howard, Treasurer:

In accordance with a vote of this union, you are hereby authorized to pay to Billy Johnson the sum of 2.00 Dollars and ..... cents, and this shall be your voucher for the same.

A. G. McGRAW, R. S.

Countersigned by
John Manick, Prest.
No. 94."

3068 The Court: Now, anything else you have to offer.

Mr. Drinker: No, I think that is all except the damages.

The Court: Will it pay us now to take a recess until two o'clock, or have you the witnesses present?

Mr. Drinker: I would be obliged if we could adjourn until two o'clock.

The Court: Get your evidence in concrete shape.

Mr. Drinker: I think we can get through this afternoon, of course it depends upon the cross-examination.

The Court: Announce a recess until two o'clock.

(Whereupon, a recess was taken until two o'clock P. M.)

3069 After Recess 2:00 P. M.

The Court: Proceed with the trial.

FRANKLIN BACHE, recalled as a witness, having been previously sworn, testified as follows:

Direct Examination

By Mr. McDonough:

Q. Mr. Bache, you are familiar with the mine known as the Dallas mine? A. Yes, sir.

Q. You have described the location of that, and I will not take any time on that. State, taking into consideration your knowledge of that mine, your experience with mines, and your knowledge of coal mining, what was the fair reasonable market value of the Dallas mine in July or about July, 1914, including in that its physical property as well as its leaseholds?

A. It had no leaseholds. The physical value of the development and plant was $40,000.00 before the destruction, before the damage.

Q. I wish you would state now what in your opinion was the fair reasonable market value of the property after the injury and damage? A. $37,300.00.

Q. And what was it before? A. $40,000.00.

Q. I will next ask you as to the Hartford Coal Company mine which is known as the Hoffman mine, is it not?

A. Yes, sir.

3070 Q. That was the last mine that was shown on the right hand side or west of the relief map that was introduced in evidence yesterday?

A. Yes, sir.

Q. State, Mr. Bache, what was the reasonable market value of that mine, including all its property and its leaseholds, if it had any in July, 1914?

A. The mine and equipment were worth $60,000.00. It had no leaseholds.

Q. State what was the reasonable market value of that mine, including all its property, after the injury?

A. $32,000.00.

Q. Take Mammoth Vein mine No. 1, which has been described in the testimony, and state what was the reasonable market value of that mine, including all of its property and the leaseholds if any?

A. $374,000.00.

Q. That is, in July, 1914?

A. Yes, sir.

Q. What was the reasonable value of that mine, including all its property after the damage?

A. $351,000.00.

Q. Take mines No. 3 and 4, Prairie Creek No. 3 and 4, as you have described them as being connected and they have been considered together, and state what was the reasonable market value of those mines, taking into consideration the

leases and all the property which they owned and had, in July, 1914?

3071 A. $279,000.00.

Q. State what was the reasonable market value of those properties after the destruction?

A. $277,000.00.

Q. Refer to the Coronado mine, and state what was the reasonable market value of that property including all its leases and its property, before the destruction, say in July, 1914? A. $119,000.00.

Q. State what was the reasonable market value of that property after the destruction? A. $111,000.00.

Q. Let me see if I understand you, Mr. Bache. I am not sure that I do.

A. $8,000.00 is the after value. I gave you the losses instead of the after value.

Q. You were speaking of Mammoth Vein No. 1, and I ask you if I understood you there. What I want you to state is the reasonable market value of that property as designated in the other question prior to the destruction and the reasonable market value after the destruction, what remained after the destruction.

A. I got you wrong. I was giving you the amount of the destruction. You want the value before and the value afterward.

Q. Yes.

A. I will change that all the way through. Could I cross it out?

Q. Don't cross it out, but I will ask you the question again. State the reasonable market value of the Dallas mine before the destruction and the reasonable market value of that

3072 mine after the destruction?

A. $40,000.00 before and $37,300.00 afterwards.

Q. Take the Hoffman mine and state its reasonable market value before?

A. $60,000.00 before and $32,000.00 afterwards.

Q. You are giving the losses again, are you not?

A. No, that is right. $32,000.00 was the value afterwards.

Q. Now, the next mine is Mammoth Vein No. 1?

A. Yes, sir, that is the one you asked me about.

Q. State the reasonable market value of that mine and its property, including its leases and all the property it had, prior to the destruction in July, 1914? A. $374,000.00.

Q. What was the value of that which was left after that mine was destroyed or injured? A. $23,400.00.

Q. Now, take mines No. 3 and 4, Prairie Creek, and state in your opinion what was the reasonable market value of

that property, including its leases and all its property, at the time of or before the destruction? A. $279,000.00.

Q. What was the value of that which was left after the destruction? A. $2,000.00.

Mr. Warrum: If the court please, there is no evidence to show the leases were destroyed by the fire. The leases were destroyed by non-payment or rent.

3073 The Court: Proceed.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

Q. Coronado mine—I believe you gave that. In order to be sure, I will ask you to give the reasonable market value of the Coronado mine, including all its property and leases, immediately prior to the destruction in July, 1914?

A. $119,000.00.

Q. What was the value of that which was left after the destruction? A. $8,000.00.

Q. Mr. Bache, No. 6 mine has been described. I wish you would state what was the reasonable value of that mine, including its leases, at the time of or before the destruction in July? A. $59,000.00.

Q. That mine of itself was not burned down?

A. No, sir.

Q. What was the value of it, considering the loss of the leases that have been described here, after the destruction of the other property?

Mr. Warrum: Defendants object to the question because it assumes the leases were destroyed by the fire.

The Court: I think that if you would take that out of the question and ask him the value of the property after the destruction, you would be getting at the measure of damages.

Mr. McDonough: Your Honor, I have already showed the leases were lost as a result of the fire.

3074 The Court: I think just as the mine stood, the reasonable market value of it then would be the measure of damages.

Mr. McDonough: Including the leases.

The Court: Including the property

Q. What is your answer to that, Mr. Bache?

A. Not counting the leases in?

Q. No, counting the leases in?

A. The value after it?
Q. Yes, sir. A. No value.

Mr. McDonough: That is all.

The Court: Cross-examine.

Cross-Examination

By Mr. Warrum:
Q. You are giving the value as of July 18th?
A. July, 1914.
Q. The day before July 17 and the [—] after July 17?
A. Well, say in July or August. I am not taking any particular hour of the day or the actual day.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness excused.)

WALTER GILMAN, called as a witness in behalf of plaintiffs having been first duly sworn, testified as follows:

Direct Examination

By Mr. McDonough:
Q. Your name is Walter Gilman?
3075 A. Yes, sir.
Q. Where do you live? A. Philadelphia.
Q. What is your business?
A. Mining engineer.
Q. How long have you been engaged in that business?
A. Twenty-one years.
Q. Are you associated with any firm or engineers?
A. I am associated with the firm of Edward V. d'Invilliers.
Q. Where is that located?
A. 518 Wall Street, Philadelphia.
Q. Have you any specialty to which you have given study in the matter of mining engineering?
A. Yes, sir. Our specialty is examination of coal property for the purposes of appraisal, to be used in connection generally with bond issues. We often appraise for banking houses and for coal company owners, coal companies.
Q. Explain what you mean by examining them for bond issues?
A. Well, for instance, if the coal operator desires to get some additional money to put in new mines on his property, he will probably go to a banking house and want to borrow a million or two million dollars and the banking house will send

us out to examine the property to see whether there is sufficient security and earnings to warrant the issue of the bond.

Q. In order to qualify you as an expert, I wish you would state your experience in making these examinations throughout the United States?

3076 The Court: Is there any doubt about the qualificaaions of this witness?

Mr. Warrum: No, I judge not.

The Court: Very well.

Mr. McDonough: Of course, if your Honor holds that, I will not pursue it any further.

The Court: They admit his qualifications.

Mr. McDonough: I will pass the matter of qualifications because there is no question on that.

Q. Mr. Gilman, I wish you would state whether you examined the properties of the Bache-Denman Coal Company?

A. I examined the properties of the Bache-Denman Coal Company immediately after the destruction, and another member of our firm examined the same properties in July, 1913, or April, 1913, rather and I have access to that data.

Q. Are you familiar with the nature of the coal?

A. Yes, sir.

Q. Do you know where the property is located?

A. Yes, sir.

Q. To what extent did you make an examination of the property after this destruction?

A. At the time I examined it, of course, I could not get in the mines on account of their destruction, but I did go in the Hoffman mine, and in the four or five immediately adjoining the property, where I measured the coal.

Q. What measurement did you make of the coal?

A. I measured from roof to floor. I will have to refer
3077 to my notes again to tell you exactly the mines I was in. I made two measurements in the Hoffman mine. Do you want me to tell you what they were?

Q. Yes.

A. In the Hoffman mine eight feet yard entries, slate roof, four feet six inches of coal, eight inches of slate, three feet of coal. I also examined the Bull Moose mine adjoining the Hoffman mine.

The Court: What is the object of these detailed figures?

Mr. McDonough: Simply to show the thickness of the coal.

Q. You need not give the details of it? A. All right.
Q. What other mines did you examine?
A. The Jackalette mine.
Q. What is the thickness of the coal there?

Mr. Warrum: We object to that.

Q. How far was that from the other mine?
A. That is the same vein, 7 feet 4 inches.
Q. How far is that from the mines of the Bache-Denman Company?
A. The Jackalette mine is located between—I will have to refer to the map. It is immediately between Prairie Creek No. 3 and Mammoth Vein No. 1. The Hoffman mine was immediately to the southwest of No. 1. The Bull Moose mine is still southwest of Dallas. I was also in the Griffith Slope, between No. 3 and 4 Prairie Creek, also in the Lake mine near the Coronada Coal Company property. That was to determine the thickness of the coal.

3078 The Court: I think we have already in the record evidence of the exact thickness of the coal in each mine, by prior testimony.

Mr. McDonough: I will not go into that any further.

Q. Did you examine that coal in this mine that you did examine, and are you familiar enough with it to state whether or not it is a valuable coal? A. Yes, sir.
Q. And you examined the properties sufficiently to enable you to give an opinion as to the value of the properties?
A. I think so, yes, sir.
Q. Take the Coronado Coal Company, including the leases. First I will ask you to state whether you examined and studied each of the leases? A. Yes, sir.
Q. Are you familiar with the terms of the leases?
A. I am familiar with the terms of the leases.
Q. Now state what in your opinion was the reasonable market value of the coronado property, including the leases, in July, 1914, and before the destruction of the property?

Mr. Warrum: The defendants object because it does not appear this witness knows anything about it.

The Court: It may help some. He may answer.

Mr. McDonough: I will withdraw it and ask him what he knows about Coronado.

The Court: He may answer.

To which ruling and action of the court the defendants
3079 and each of them at the time duly excepted and still except.

A. Do you want to know the value of the leasehold plus the plant?

Q. I do.

The Court: Before the destruction.

The Witness: Before the destruction of it?

Q. (By Mr. McDonough) Yes. A. $110,000.00.

Q. You examined the location of the Coronado property?

A. Yes, sir.

Q. Do you know where it is? A. Yes, sir.

Q. What was the value of it, if any, after the destruction? After the lease was forfeited?

A. After the forfeiture of the leases?

Q. Yes?

A. It would not have any value except for salvage, which I have not figured out.

The Court: See if he knows what the value was as the whole matter stood immediately after the fire on the 17th day of July?

The Witness: Immediately after the destruction?

Mr. McDonough: Yes, and the forfeiting of the leases. We want that in.

The Court: They were not forfeited at that time.

Mr. McDonough: They were forfeited as a result of this fire.

The Court: Yes, but the qeustion is, what was the re-
3080 sult immediately after the destruction. If the leases were of no account, that might be proper, but the question here is the value of the property as it stood at that time.

Mr. McDonough: Our view of it is that the value may be fixed at any time within that year or within a reasonable time afterward, and we have already shown that the leases were lost as a result of that destruction.

The Court: Yes, but some men might have been willing to have paid a good deal of money for them and kept these leases alive. The fact that these parties did not have the money to rejuvenate the property, would not be controlling in this case.

Mr. McDonough: Wouldn't that be a matter to be brought out on cross-examination?

The Court: I think not. I think the measure of damages would be the difference between the value of the property as it stood for mining coal before the destruction, and immediately after the destruction, the market value, whatever it would bring from someone wanting to buy and someone ready to sell.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

Q. Do you know what the value of the mining property was, excluding the leases, immediately after the destruction?

The Court: Including the leases.

Mr. McDonough: Including the leases?

The Court: Yes.

Q. Including the leases immediately after the destruction?
A. Am I to take into consideration the leases as still
3081 in effect?
Q. That is the way I understand the court's ruling?
A. And not cancelled?
Q. That is the way I understand the court's ruling. Then I want to ask you another question about that later?
A. I consider that the leasehold was worth about $47,500.00, and the balance was the plant value.

The Court: Was there anything in these leases that voided the leases if the property should be rendered inoperative by fire?

Mr. McDonough: There is an insurance clause.

The Court: Is that provision in these leases.

Mr. McDonough: I will have to look at the leases.

The Witness: There is a provision that they have to pay the royalty except in cases of strike.

The Court: You examined the leases?

The Witness: Yes, sir.

The Court: Very well.

Q. (By Mr. McDonough) In your opinion, that lease was of the value of $47,000.00? A. Yes, sir.
Q. The Coronado lease? A. Yes, sir.

Q. Take mines No. 3 and 4 at Prairie Creek, with the knowledge that you have gained in the investigation of that mine and your experience, what would be the reasonable market value of that mine including the lease immediately before the destruction? A. About $330,000.00.

Q. What was in your opinion the reasonable market
3082 value of the lease attached to that mine?

A. $255,000.00.

Q. Are you able to tell what was the value of the salvage after the destruction of that mine?

A. No sir, I am not able to tell that.

Q. Come to Mammoth Vein No. 1, are you familiar with that mine? A. Yes, sir.

Q. State in your opinion what was the reasonable market value of that mine, including the lease and all its property, prior to the destruction? A. About $290,000.00.

Q. What in your opinion was a reasonable value of the lease attached to that mine? A. $215,000.00.

Q. Are you able to give the salvage value of the property after the destruction of that mine? A. No, sir.

Mr. Drinker: May I call your Honor's attention to a feature in connection with this? Perhaps your Honor would like to know that the lease contained provision, all of them, as I understand, that they were forfeitable by the lessor in case the lessee became insolvent. The witnesses have testified here that the lessee became insolvent on account of the destruction of the property.

The Court: The trouble with that is this: that if these companies had been able to take over the property at that time
the measure of damages would be what they were
3083 worth, what the actual loss was, caused by the conflagration.

Mr. Drinker: May I call your Honor's attention to the decision of the Circuit Court of Appeals in this matter. They have passed on this very question, and held in our favor. Even though your Honor might not consider that good law still you might follow it.

The Court: That opinion is not binding on this court, because it had been reversed on that ground.

Mr. Drinker: Not on that ground, your Honor.

The Court: Not on that ground, but it was reversed entirely.

Mr. Drinker: The opinion is the law of this case except insofar as the Supreme Court modified it. This particular question was not argued, was not assigned.

The Court: But the Supreme Court did not modify the opinion, it reversed the case.

Mr. Drinker: Yes, but this question was not among the points argued in the Supreme Court at all, and if the Circuit Court of Appeals has held that it was proper to submit to the jury, that is the law of this case. The Circuit Court of Appeals has decided that point in our favor, and with the greatest respect to your Honor, I think it binds your Honor. The Supreme Court has not said a word about it and that is the law of this case.

The Court: Proceed.

Mr. Drinker: May I read.

The Court: Yes.

Mr. Drinker: "Evidence of the value of the leases held
3084 by plaintiffs, and which, by reason of the unlawful acts of the defendants, are shown to have been forfeited, was clearly a part of the damage sustained and admissible for the purpose of enabling the jury to determine the losses and damages of the plaintiff. Section 7 of the Sherman Act provides for three fold damages sustained by reason of violations of the provision of that act. A lease may be as valuable as any other species of property, and they are sold and transferred for valuable considerations in the same manner as any other species of property. It is almost an every day occurrence that oil, coal and other mining leases are sold for large sums of money. The court in his charge to the jury submitted that question fairly, and no exceptions were taken to that part of the charge. All damages which are the natural and approximate results of a tort are recoverable."

The Court: There is no question about that.

Mr. Drinker: That is the law of this case.

The Court: No, I think not. They say the leases were forfeited as a result of this fire, that is the reason I made the inquiry. I think the law stated there is all right.

Mr. Drinker: Then, if you Honor please, I want to call your attention—

The Court: Proceed with the trial.

3085 Cross-Examination.

By Mr. Warrum:

Q. Just one question: You came out here on the 25th of July, did you not?

A. Yes, sir.

Q. To make this examination? A. 1914, you mean?

Q. Yes.

[Q.] Somewhere between July 25th and August 1st.

(Witness excused.)

R. M. Eyster, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

By Mr. McDonough:

Q. Where do you live?

A. Bokoshe, Oklahoma.

Q. What is your business? A. Mining engineer.

Q. How long have you been engaged in mining engineering? A. 12 years.

Q. Are you familiar with the location of the mines of the Bache-Denman companies? A. Yes, sir.

Q. How long have you been familiar with them?

A. 11 years.

3086 Q. As mining engineer state whether you have had any experience in valuing mining properties, including the leases on which properties are located?

A. Yes, sir.

Q. What experience have you had in that line?

A. I made valuations of the Scranton Anthracite Coal Company's property at Montana, Arkansas; the B. & A Coal Company at Schulter, Oklahoma; the McAlester-Edwards Coal Company at Pittsburg, Oklahoma; the Pennsylvania Mining Company—or rather, the Arkansas Anthracite Coal Mining Company, and the property known as Mine No. 11, Higbee, Missouri. The Bokoshe Smokeless Coal Company at Bokoshe, Oklahoma; the Subiaco Coal Company at Scranton, Arkansas. I also made examinations of several of the Bache-Denman leases and properties, and some others I may not think of.

Q. When did you examine the Bache-Denman properties in this county?

A. In December, 1914, and I also was down later, I believe in 1920, and went over part of them again.

Q. To what extent did your examination extend, just tell how you examined them and to what extent you examined each mine, and what mines you examined?

A. In December, 1914, I went to Prairie Creek No. 3 and 4 mines, and was unable to get down the shaft at No. 4 mine. I went into the smaller mines on the property along the outcrop, where I could get in, to get the thickness of the coal, and I also went a comparatively short distance down No. 3 slope, where I could measure the coal, and saw a strip
3087 pit that was then working, a face that had been a strip pit, near the outcrop, about, to measure the coal in No. 3 and 4 lease. On the Mammoth Vein lease, or property, I went into the mine, which is about half way between Prairie Creek No. 3 and Mammoth Vein No. 1 mine, where I measured the coal and examined it. I went into the next mine there, I believe the Hoffman mine, and went through a considerable portion of that mine, which was also on the same lease. I could not get into the slope of No. 1 mine, Mammoth Vein. Later I went to the Coronado mine, after it was pumped out, and went underground in that mine, and measured the thickness of the coal and saw the character of the coal.

Q. Mr. Eyster, did you make a study of the lease at the Coronado mine?

A. I read over the lease, yes, sir.

Q. Have you had sufficient experience, and have you [sufficient] knowledge to enable you to determine the value of a leasehold? A. Yes, sir.

Q. I wish you would state, in your opinion, what was the value of the leasehold at the Coronado mine, in July, 1914?

A. $70,000.

Mr. Warrum: We object to that, it seems to be immaterial, as the leasehold was not destroyed, and no time is fixed in his answer.

The Court: He may answer.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

A. $70,000.

3088 Q. Have you also examined the leaseholds at mines Nos. 3 and 4, Prairie Creek? A. Yes, sir.

Q. And have you also examined the lease under which those mines were operating? A. Yes, sir.

Q. State in your opinion what was the value of the leaseholds of those mines in July, 1914? A. $225,000.

Q. Have you examined the lease at the Mammoth Vein No. 1? A. Yes, sir.

Q. And are you familiar with that property also.

A. Yes, sir.

Q. State what in your opinion was the reasonable market value of that leasehold in July, 1914? A. $200,000.

Cross-Examination.

By Mr. Warrum:

Q. That was the value of the Prairie Creek lease in December, 1914, too, was it not?

A. I valued the leasehold in December, 1914, basing my examination on the fact that there had not been any work done on that lease since July, and I hold and believe that the value that I have stated is effective as of July, 1914.

Q. I will ask you if you did not testify in the former trial of this case? A. I did, sir.

3089 Q. And if you were not asked by Mr. Drinker this question: "What in your opinion was the reasonable value in December, 1914, of the lease covering Prairie Creek No. 4, being Exhibits 105 and 107", and if you did not answer, "It was between $225,000 and $230,000"?

A. My answer was from $225,000 to $230,000.

Q. This is correct, the answer I read you?

A. They are both correct, there is no difference in the value of the leasehold.

Q. Now, I will ask you if you were asked this question: "What in your opinion was the reasonable value in December, 1914, of the leaseholds covered by leases, Exhibits No. 100 and 101, the Mammoth Vein No. 1", and if you did not testify, "On the Mammoth Vein lease and the supplementary lease, I placed that between $195,000 and $210,000"?

A. Yes, sir, and I have done that again.

Re-direct Examination.

By Mr. McDonough:

Q. Was your testimony in the former trial based upon the assumption at the time that the lease was in effect at the time you valued it?

A. I really don't know. There is no change in the value of the leasehold, that I can see, of the physical value of the leasehold, from December or July, 1914, after the destruction of the property or prior thereto; for that matter the leasehold still has that intrinsic value.

Q. If it was in existence?

3090 A. Yes, sir.

Mr. McDonough: That is all.

The Court: Stand down:

(Witness excused.)

Mr. Drinker: Mr. Bache feels that in his testimony he perhaps did not understand the situation, and perhaps he ought to modify something, in view of the ruling of your Honor. His testimony was given under the other basis. May we have a few minutes?

The Court: Very well.

FRANKLIN BACHE, recalled as a witness in behalf of plaintiffs, being previously sworn, testified further as follows:

Direct Examination.

By Mr. Drinker:

Q. Mr. Bache, I did not hear your examination, but I understand that your testimony as to the value of these properties before and after, on cross-examination, was addressed as to the value after, to the value immediately after the destruction of the properties. Now, you have stated to me that you want to explain your testimony in that connection. Will you please do so?

A. Some of our properties were operated on coal leased land, land leased from the Midland Valley Railroad Company, and other coal land owned. The destruction of the mining plants prevented us carrying out the terms of those leases, and made the lease cancellable.

Mr. Warrum: The defendants would like to object for
3091 the reasons heretofore stated.

The Court: Let him explain.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

A. Made the leases cancellable, so that the owner of the land could cancel the lease.

Q. The leases provided, did they, that the lessee covenanted and agreed that the mine on the land should be worked continuously so far as the demand for coal warranted—

A. That is the general terms of the lease.

Mr. Warrum: We object to that.

The Court: I apprehend the lease is the best evidence.

Mr. Drinker: It can not be disputed, and I thought that we could get it concisely that way.

The Court: Yes, but still the terms of the lease is the best evidence. They are in evidence, are they not?

Mr. Drinker: Absolutely, in this record.

The Court: Then any of the leases can be read.

Mr. Drinker: I realized that it was irregular, but did not think it would hurt.

Q. Go on with your explanation.
A. After the tipples and hoisting engines and plants were destroyed, we could not operate those mines continuously, or operate them at all. Under the terms of the lease that rendered the lease concellable.

Mr. Warrum: The defendants object to this witness'
3092 charac- [—] provide, as testified to already, for a minimum royalty when not operating. He has testified to that.

The Court: I suppose as far as the terms of the lease are concerned, that is true. Proceed.

Mr. Drinker: The decree of this court cancelling the lease, which was relied on by the other side in arguing this question in the Circuit Court of Appeals, and the other side argued this in their brief in the Circuit Court of Appeals from page 238 to page 252, and the Circuit Court decided—

The Court: Proceed with the trial.

Mr. Drinker: That is all.

The Witness: I had not finished.

Q. I don't want you to go away before you finish.

Mr. Warrum: We object to the witness testifying unless he is asked some question.

Q. I will ask you a question; will you kindly finish your explanation, Mr. Bache?
A. After the properties were destroyed, and we could not operate, the lease became cancellable; they were actually cancelled because we could not comply with the terms of the lease, about the first of January, 1915, five months after the properties were destroyed, and my testimony, when I gave these valuations, I gave the valuation of the property before anything happened in July, and the value of the property after the leases were cancelled. But I said inadvertently that

I was making my testimony as of just before and immediately after; now, while the leases became cancelled immediately afterwards, they were not actually cancelled.

3093 Mr. Warrum: We object to this argument.

Q. When you gave as your opinion the figures in your total difference between the value before and the value after, as $828,700, that included the value of the leases, did it?

A. It did.

The Court: Stand down.

(Witness excused.)

Mr. Drinker: I would like to recall Mr. Gilman.

WALTER GILMAN, recalled as a witness in behalf of plaintiffs, having been previously sworn, testified further as follows:

Re-direct Examination.

By Mr. Drinker:

Q. In your opinion, where a coal lease is in existence, and the lessee has made a default under the provisions of that lease, giving the lessor the right to forfeit it, what in your opinion is the value of that lease?

Mr. Warrum: If the court please, the defendants object because this witness can not possibly qualify as an expert upon that.

The Court: Oh, let him answer.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

A. Why, to the lessee it would not be of any value.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness excused).

3094 The Court: Anything further?

Mr. Lucas: Just to make certain, I am in doubt as to whether, when the two checks issued by District 21 in payment of ammunition, when those checks were offered in evidence, whether the stubs were available at that time to be offered, and if not, I want them introduced at this time.

Mr. Grant: They were offered.

Mr. Lucas: Mr Grant says they were offered, so we withdraw that offer.

Mr. Warrum: If the court please, at this time I will hand the reporter, I have already handed it to counsel on the other side, a statement of our cross-examination of these documents.

Mr. Drinker: That is all right, they may go in.

Mr. Warrum: From the joint conference proceedings held between the United Mine Workers of District 21 and the operators of said district, July 13th, 1903, so much of page 3 thereof as shows that Franklin Bache was present and participating.

From the joint conference proceedings of the representatives of District 21 and the union operators of the said district, held at Ft. Smith, August 18th-September 2nd, 1903, on page 3 thereof, so much as shows that Franklin Bache was present; and on page 6 thereof, that he was appointed permanent chairman of the joint conference. So much of page 475 of said proceedings as shown Heber Denman was present, and so much of page 476 thereof as shows that Mr. Denman was appointed on a committee with P. R. Stewart.

3095 From the proceedings of the joint conference of District 21, United Mine Workers of America, with the Southwestern Interstate Coal Operators' Association, held July 12th, 1904, as follows, the statement of Chairman Brown as to the purpose of the joint conference, to-wit:

"Mr. Brown: This, I understand, is the third annual convention held in this city under what has come to be known as the Joint Trade Agreement Movement. What is this movement and does it portend, and upon what does it depend for success?

The Joint Trade Agreement Movement, as I understand it, is simply the meeting of men, representing different interests requisite to the conduct of business, assembled for the purpose of formulating in reason and mutually agreeing, in good faith, on that which, in their judgment, they believe to be a just and equitable measure governing the payment of wages and the conditions of work, for a specific period, and providing a method of adjustments should controversy or misunderstanding arise as to the proper interpretation of the agreement.

Upon what does and upon what must this, or any other movement of like character, depend for success? Its success

has, its success does, and in the very logic of all things material its success must depend upon the absolute equality in mind and manhood of the representatives of both parties to the contract. How else is it possible? How, in the name of all that is reasonable and consistent, can you expect to devise, formulate and complete a just and equitable measure unless both parties are responsible for its creation, growth, development and completion, are equal in intelligence,
3096 honest, integrity and independence?

It was upon this idea the movement was conceived, and it is upon this principle it must rely for sustenance and strength to survive the period of infantile weakness, live, expand and grow into maturity. It is the legitimate, natural and consequent result of intelligent cooperation, organization —union, if you will,—on the part of the laboring element. This was the inception, as it was the direct cause, of the principle of the Joint Trade Agreement Movement being first adopted and carried into [execution]. Before such an evolution in the settlement of trade dispute became possible it was absolutely necessary that the leaders, representatives of the labor element, demonstrate that they were at least the equals of the employers in mental capacity and scholarly attainments; and this was only accomplished after long years of self denial and patient cooperative effort on the part of laboring men, contributing of their sustenance, their hard won earnings, to the support of those of their own class who develop and manifested a capacity to lead and direct the action of their fellow workmen so they could devote their time to mental improvement, instead of being constantly bound down, through bodily necessity, to the narrow environment of hard working, physical labor. And it was only after they had developed mentally and secured recognition for having obtained this degree of intellectual ability that the employers could or would meet and treat with their employees on the basis of equality and maintain their own dignity and self respect, or have indeed any assurance whatever that the result of their deliber-
3097 ations could or would be respected and carried into effect after they had been agreed to.

This is the Joint Trade Agreement Movement and the principle upon which it is founded; and they very moment any agreement reached bears on its face the brand of mendacity, arrogancy or domination, that moment the movement is doomed; it should and will sink into oblivion and become a memory of the past."

Mr. Warrum: And from the same proceedings, statement made by J. T. Stewart, a miner, as follows:

"Mr. John T. Stewart: I move that the lists of delegates of the miners' organization and the members of the operators association be placed in the hands of the secretaries and accepted as the report of the committee on credentials.

The motion was seconded and carried."

The statement of Mr. Britton, a miner, in the same proceeding, found on pages 145, 146, 147, 148 and 149:

"Mr. Britton: We have heard a great deal of discussion today from both sides of the house. I have heard from the other side the same old song, ever since I have been knee-high to a grasshopper, whenever they wanted a reduction. They seem to think we miners are dying to work, but we aint. The arguments they have made on this floor, as far as the other side is concerned, are that they are afraid the bottom is going to drop out of the whole caboodle. They are trying to make us believe the gas and other things—hot air, I suppose—is going to drive them out of business and that we won't be in it. The point I see, whether they see it or not,
3098 is that they have nearly substantiated everything the miners have said. They got up on this floor and conceded the differential. I can read their exact words. There is probably no scale district with so much differences to contend with and this and this Interstate district. That is one of their statements on the floor. Now I am coming back to the original thing.

We believe in this matter of differentials, and there isn't any practical miner but knows the facts of the case. You never can substantiate the statement that in a thin vein you can dig more coal or get as much product as in a higher vein. That is why there is justice in our claim that when there is two or three inches of coal less we are entitled to extra compensation. We demand that from a practical standpoint.

You people come back and tell us you are going to give us something on the brushing! By golly! you are getting magnanimous; you are going to die with enlargement of the heart!

Another speaker got up and said when he heard the miners' scale he was surprised. When I heard the operators' scale it took my breath away. There are conditions in there, gentlemen, I never saw anyhere or heard expressed. Talk about a cold-blooded proposition! If that aint one there never was one presented to the miners. It is the most cold-blooded thing

I ever heard of are read of. They have made allusions to me from different standpoints on what I said yesterday. It is the truth whether we like it or lump it. We demand as United Mine Workers a closed agreement, and you are in the same position or you are coming to that point.

3099 Now, gentlemen, it has come to this, we have got to come down to business. You claim this competition is so great. Well, what difference would it make, the reduction you are claiming? It would not put you on a better plane than you are now, not a bit. If such a thing is so you are only going to pull down the other fellow, and the next time you meet you are up against the same proposition. You must stop somewhere, and we say stop right now. We may as well call this stoppage now as at any other time, because that is the natural sequence. There is bound to be a place where we say stop. As I said before, we are not dying to get work. It is just like this: If all this thing is going to go up in gas and balloons, the reasons stated to the miners for this reduction, and if we get less work we should get more for the work we do. That's what we are after. You cannot controvert the fact that if this thing falls down, and we have got to live on three or four days' work a week, you bet your bottom dollar we want more money for that three or four days. I think we have defended our position. We didn't ask for too much. We are not as cold-blooded as you people; we have a little sympathy for the operators. It isn't very much, but we have a little. As I said before, I have read many a document in this age, but that takes the cake. Some of the things in there would cool your blood to think about. They have it like old Judge Holliday said in the Eagles, he had got into such a habit of fining he couldn't get away from it. I believe you people are in the same condition in the proposition you have presented to us."

3100 Mr. Warrum: The statement of Mr. Bousfield, a miner in the same proceeding, as follows, and as found on pages 183 and 184:

"Mr. Bousfield: The Colorado Fuel and Iron Company is anxious to start those mills tomorrow, but they are not able to do it. There is not a coke oven in Colorado that the operators have not used every effort to start in preference to doing anything else. It is not because the iron market and the steel market is in the condition it is. You are barking up the wrong tree when you claim Colorado as a competitor with this district. Had it not been for the strike in Colorado the operators here would not have mentioned that state in

their arguments. In all the conferences we have had in the past Colorado has never been mentioned as a competitor. No operator has ever mentioned Colorado as a competitor, even in the face of the conditions existing in Colorado, when they worked twelve hours a day and seven days a week. Fuel was produced there cheaper than anywhere else, and even in the face of that fact Colorado was never mentioned here as being a competitor of these districts. But when the hours of labor have been reduced, then they come into the conference and say Colorado is a competitor. Colorado is peculiarly situated. They have a market of their own, and as long as long as Colorado is Colorado I don't think either of these districts will have any necessity for going into their markets."

From the proceedings of the joint conference of District 21 with the operators of said district, held at Kansas City, Missouri, in April, 1908, and so much thereof on page 1a,
3101 as shows that Franklin Bache was a representative of the operators on the scale committee.

From the proceedings of the joint conference of the representatives of District 21 and members of the Southwestern Operators' Association, held February 23rd, 1910, containing the response of miner Bousfield to operator Scholtz, found on pages 68 to 71 thereof, as follows:

"Miner Bousfield: Will you pardon an interruption at this time?

Operator Scholtz: Yes.

Miner Bousfield: That is the report of G. W. Parker?

Operator Scholtz: Yes.

Miner Bousfield: .... I have read the report of every statistics that I thought it my business to read, and I must be there is a stronger market sprung up in that territory. Coal has been in demand, even an increased production, where oil and gas are consumed, and yet they call attention to this partial decrease, which is very little. It is insignificant when compared with the increase in coal production that I have referred to, that has found a market in the states already stated by Mr. Scholtz that were previously supplied by them. I am not going to have very much to say at this time about the proposition excepting that we might come in here and furnish a statement of the comparative figures of 1902 and 1907, which would put the shoe on the other foot. Conditions were not normal and they are not fair to be taken as a criterion to formulate a scale for the miners of this country."

3102 The further answer of Miner Bousfield found on page 77 of the same proceeding:

"Miner Bousfield: No, not for me. It does not convey sufficient idea to me why your argument ought to be accepted as sufficient reason why the demands that other people have made should not be granted."

From the proceedings of the joint conference of operators and miners in District pl, held April 12th, 1910, the remarks of Mr. Howat, a miner, on page 42, as follows:

"Mr. Howat: Mr. Scholtz seems to take a great deal of pleasure in speaking about West Virginia and about wages there for the day men. It would be just as reasonable and fair for us to call your attention to the fact that in Montana and Wyoming they pay $3.40 and $3.60 for day men.

Mr. Howat: I don't believe there is one pound of West Virginia Coal comes into competition with Kansas coal."

Also from the same proceedings, the remarks of Mr. Farley, a miner, as follows:

"Mr. Farley: Will you permit me to ask you a question?

Mr. Scholz: Sure.

Mr. Farley: Is Mr. Scholz or his company operating in the Cabin Creek district, West Virginia?

Mr. Scholz: No, sir, but I have some friends there, and people I know very well, and I was there for ten years myself.

Mr. Farley: Well, that shows how you are so much in sympathy with that statement.

Mr. Scholz: My sympathies are neither one way or the
3103 other, but I am simply stating facts.

Mr. Farley: I want to say that so far as the organized district of West Virginia is concerned that Mr. Scholz is not stating the facts."

Also, from said proceedings, the answer of Mr. Howat, a miner, to the operators, found on pages 72, 73, 74 and 75:

"Mr. Howat: Mr. Chairman, if this is a final proposition from the operators, I realize our meeting is about to finish its business here, and as far as the miners are concerned I want to say that there must be an increase of wages in the southwest if the mines operate with union labor. There is no

way of getting away from this proposition. It seems mighty strange at this time that the operators tell us positively that because of competition they can not afford to pay us an increase in wages, and will have to close their mines down, or go into bankruptcy, and then tell us in the same proposition that they will have the president of the United States arbitrate. Now, I would like to ask the operators what would be the sense of arbitrating this proposition, when they say it is impossible to pay an increase in wages or you would have to go bankrupt. If the president of the United States arbitrated this proposition and decided against you, you would not pay it and would have to close your mines down or go bankrupt, and consequently a proposition of that kind is ridiculous on the face of it. As far as we are concerned, the question of arbitrating—it is not going to be arbitrated. That is final as far as we are concerned. Strange in the Southwest at this time the operators say they cannot pay an increase
3104 because of the competition of the nonunion fields, when we know that the operators in the Southwest are not confronted with anything like a serious competition of the non-union fields as the eastern fields in Ohio and Pennsylvania are, where they are surrounded with non-union men. Again, the operators in the non-union fields in some parts, we know, have agreed to pay an increase in wages. We find all classes receiving an increase in wages, not only among the organized, but men in all classes, and the operators at this time come in and tell us they are not in a position to pay anything more in an increase in wages, or anything put in the contract that would increase the cost of production of coal in the Southwest, and we find ourselves in the position among the miners in the Southwest, that the increases in the cost of living has been such in the last seven years, that we must have an increase in wages. The cost of living is increased from 30 to 60 and 65% and on a great many things, and our wages have been at a standstill for the past seven years, and at that time we had one small reduction which we got back again, but our wages was the same at the expiration of the last contract, as in 1903. The cost of living has been continually on the increase, and we have no reason to believe but what the cost of living will continue to increase in the next two years. Notwithstanding those things the operators want us to agree to the same old scale. Now, we want to say positively here today, very clearly and distinctly, so that there will be no wrong impression among the operators, that regardless of results and consequences that we intend to have an in-
3105 crease of wages in the Southwest, before the mines operate with union labor; that is our position, and if

this is a final proposition from the operators, we want to know it today. Let's have no more dodging of this question, but tell us, like men, clearly and positively, that this is a clear and final proposition, so that both sides will know where we are at. We don't want you to come in with a proposition today, I don't know whether you are serious or not, but we don't want you to come in today and say you cannot pay an increase in wages, and kill some more time for about a month until some of you people that have some surplus coal stocked up, get rid of it. Some of you people that have surplus coal on hand, you don't want to operate your mines, and don't want some of the small operators to operate theirs. We don't want you to come in with this kind of a proposition now, and when you get the coal used up, and get ready to make a contract, come in with another. I don't know whether that is the game today, but you have played it in the past, and I suppose before we leave this hall today that the operators will make it very clear and definite to us. Let's don't beat around the bush about it, but tell us absolutely if this is a final proposition, that under no circumstances are you going to agree to an increase in wages, or tell us that probably in a month or so, when the surplus coal is used up, some of the railroads, that then they might be ready to consider the proposition and give us an increase in wages. Now, we have made it clear to you, here, at least I have and probably some one else will before we adjourn, that so far as we are concerned
3106 there will be no arbitration of the increase in wages; absolutely none. The other districts did not arbitrate that question, and we are not going to, because we know we must have an increase, and I hope that the operators will make it very clear to us today before we adjourn, that this is an absolute and final proposition, and if they are not going to give us an increase in wages, let us know it definitely. We don't want any more game of hide and go seek, or anything like that. We want to understad each other thoroughly, so that you people can tell your operators when you go back home what you are up against, and we can tell our men of the United Mine Workers of America what we are up against. Let's have a clear understanding today, so that we will not bother with meetings here any more, or the calling of meetings any more. Let's understand one another thoroughly."

Mr. Warrum: From the proceedings of the special convention of District 21, held at Ft. Smith, May 18th, 1914, so much thereof on pages 1 and 2, as shows the purpose for which said convention was called:

"Proceedings.

Of the Special Convention of the United Mine Workers of America, District 21, Convened in the City of Fort Smith, Arkansas, at the Labor Temple, Monday, May 18, 1914, at Ten O'clock A. M.

The convention was called to order by President Stewart.

President Stewart: Fellow delegates, I didn't write up any report for this convention. I did not think it was necessary on account of the peculiar nature of it, and as we
3107 have a First Aid and Rescue Work demonstration at the ball park about one o'clock, I thought that we could meet this morning and convene the convention and appoint the Committee on Rules and Order of Business, and let them report, and have a partial report from the Credential Committee, and tomorrow morning the convention could get down to business. I believe that every delegate here wishes to go out this afternon to the demonstration. The terms are here from the different mines, and I believe it is the unanimous opinion of the convention that we should convene and organize the convention and then adjourn until tomorrow morning, when we will get into the actual work of the convention. The Secretary will read the Call of the Convention.

Secretary Holt: (Reading) Special Convention Call, United Mine Workers of America, District 21:

Acting in accordance with a resolution passed by the Conference and Scale Committeemen together with the District Officials in joint session, from the three Southwest Districts, Nos. 14, 21 and 25, held in Kansas City, Mo., upon conclusion of the taking of testimony in the recent investigation which was held under the personal direction of National President John P. White, and in accordance with Article nine (9) Section twenty (20) of the District Constitution, which reads as follows: 'Special Conventions shall be called by the President when so ordered by a majority of the District Executive Board.'

I do hereby call a Special Convention of the United Mine Workers for District 21, to meet in the City of Fort Smith, Arkansas, at the Labor Temple, Monday, May 18, 1914,
3108 at 10 o'clock A. M. for the purpose of considering and acting upon the testimony and evidence contained in the record of the court hearing held in Kansas City, Mo., April 13th to 22nd, inclusive."

From the proceedings of the special convention of the District 21, held at McAlester, Oklahoma, September 21st, 1915, on page 126, as follows:

"National Organizer Dalrymple: 'I want to state that I am somewhat surprised at the Grievance Committee's report this morning and my reason for making that statement is simply this: The first week or so there has been charges and countercharges and statements sent out throughout the press of the state of Oklahoma about some irregularities in handling some funds of the former district officials of District 21, and to the effect that there would be a house cleaning. Now I want to go on record in front of this delegation, to this effect, that as one of the former officers I am dead willing that the lid come off from the top to the bottom.'

Delegate McElroy: I differ with the brother in regard to his speaking on the floor.

Delegate Stewart: I rise to a point of order.

Chairman Thurston: My ruling is this, any man that was a member of the former board I will rule has a voice, being that this come before us, and they are part of the accused, as I understand it.

Delegate McElroy: Just a word in regard to this lawyer—

Chairman Thurston: But I don't believe, within my own mind, that any national organizer or any other man
3109 from the national will be allowed to speak on this floor, unless he was a representative or a member of the old board, that is my holding."

From the proceedings of the convention of District 21, held February 21st, 1912, as follows; from the statement of District President Stewart, as found on page 19:

"The main purpose of this joint commission was to ascertain and have tabulated all of the unwritten conditions, and compile same in the different sections of our district as whenever there is a new mine foreman or superintendent of a coal company, they immediately (in order, it seems to me, to try and gain some reputation) try to attack our unwritten conditions, thereby causing us an enormous amount of trouble and expense. And while in no instance have they been able to make any headway along these lines, it is a great source of annoyance to our members, mine committees and officials, and in view of the fact that the operators refused to co-operate with us, I considered it a useless expenditure of time and

money to make this investigation, as the operators would deny anything that was on the report that did not suit them, claiming that it was not a joint report signed by two parties there."

From the speech of William Green, as follows; found on pages 125, 126 and [126] as marked:

"I have frequently said, and will repeat it here now, and I would not hesitate to undertake the job and guarantee it would be carried to a successful culmination, that in this year 1912, instead of having one-third of the members
3110 in our organization, we had every man in it that mines coal from the Gulf to the Lakes and from the Atlantic to the Pacific, that I would guarantee to deliver to the mine workers of this country an increase of wages not less than 25 per cent, and a reduction in the hours of labor to six, and other improved conditions of employment. (Applause.)

Why, adjoining the great State of Ohio from which I came, there is a little mountain State of West Virginia, and I don't know whether any of you men have been there or not, or know very much about that state. If you don't I will tell you a little something about it just briefly. All that separates it from the State of Ohio is the Ohio River that flows majestically along its southern borders between the mountain State or West Virginia and the Buckeye State from which I came. There is no reason under the sun why the Ohio River would be the mark or line of distinction between a union field and a non-union field. There is no reason why on one side of the river we should have a complete organization and on the other we have non-union conditions with all of its fierceness and all its ferocity. There is no reason why such a condition exists, but it does, and that in West Virginia. Why, my friends, it is a wonderful state. Its hills and its mountains, its valleys are underlaid with veins of coal which it seems as though Providence has lavished its hand upon this great state, and that it has bestowed in the mountains and valleys of that great state a deposit of coal that is unequalled in richness and in heat units the world over. Nature has favored this great state wonderfully, both in the richness of its min-
3111 eral deposits and in the easy manner or easy access in which the coal is mined, and in that state there is employed 60,000 men. * * * And what are the non-union conditions surrounding them there? Why, my friends, it would startle you, or shock you, if you found out what they are. They don't dig coal there by the ton, they mine it by the car, and I might go a little further and say they don't mine it by the car, but by the acre. Some of those cars are so large that

they hold one or two tons, and I have been told by miners who work down there that they have shoveled all day into one of those cars and have got a ladder at night and climbed up to see what they had shoveled in, and they couldn't see it.

In fact, the only cause that the coal operator in West Virginia had for not using these coal cars that the miners loaded at so much a car on the railroad tracks for gondolas is because the tunnels are too small for them to pass through, and those are the cars that they load at so much per car. I may have exaggerated that a little, my friends, but it is bad, and I want to leave the impression that it is really bad. Then they have the company store, with all its viciousness, and some of you men here remember how in the olden days the company's store used to be the means of oppression; how men used to be driven to deal in the company stores, and if they have a pay, and pay two or three prices for the goods they bought of the men who employed them, if they didn't do that they were discharged and sent on the road to try and
3112 get work some place else. They have the company store with all its viciousness, so that the fellow that mines the coal and loads those big cars I told you about, if he happens to load two or three in a day, and earns fifty cents or seventy-five cents, the fellow that has the store gets the fifty or seventy-five cents in the store by selling him goods at an exorbitant profit so he get him coming and going, and if he doesn't want to deal in the company store, they have no use for him, as a rule, in those mines. Then, they have a lot of thugs and guards employed down there, men of the lowest type, criminals, thugs, men who value human life about as you would value the life of a snake. Men who would not hesitate to commit murder, the vilest, lowest, degraded type of men that are employed as thugs and criminals, and whenever an organizer of the United Mine Workers of America enters that state for the purpose of preaching the doctrine of unionism, unless he is extremely careful, he is assaulted, and in some instances, killed, and in some other instances, so badly crippled that it is a warning to others not to attempt to do what he had tried to do. And this, in the state of West Virginia, in the land of the free and the home of the brave; the land where it is stated that our forefathers died in order that we might have liberty and freedom and the right of free speech."

From the speech of Vice President Hayes, as follows, found on pages 134 and 135:

"Our organization today is in much better shape, I believe, than it has been in years gone by. We recently held one of

the most successful conventions in the history of our
3113 organization. A convention that enacted more progressive legislation than any convention that preceded it in the history of our organization. It has been the aim of President White's administration to get the organizations as close to the rank and file as possible. The success of an organization does not depend so much upon the leaders of the organization as it does upon an intelligent rank and file, as it does upon the men themselves. The future of this movement is not what any leader might make it, but it is what you men make it yourselves, and that has been the thought and the idea that we have tried to inculcate into the minds of our membership since we have been charged with administering the affairs of our international union. This great movement of ours was the outgrowth of oppression, of tyranny, as all other great movements, humanitarian movements, economic movements that have preceded this one in the history of the world have been. The time came into the lives of the Mine Workers of America when they came to the conclusion that it were better to survive on top of the ground than perish beneath the ground, and inspired by the same ideals, and the same spirit that characterized our forefathers when they threw off the yoke of Great Britain, that spirit is found today, and was when this organization was established. It is a great thing to be enlisted in a movement of this kind, a movement that has brought more sunshine and more happiness into the lives and into the homes of the mine workers of this land than any other changes that have come into our lives. If there is one calling on the face of the earth that is entitled to a fair,
living wage, that is entitled to a short work day, that
3114 is entitled to the best possible protective laws to protect lives, limbs and health, that calling is the calling of the miner. There have been 30,000 miners killed in the mines of this country in the last ten years. Think of it, my friends, an army of 30,000 of our comrades murdered, and this thought occurs to me at this moment, that a great majority of those men were offered up as a sacrifice on the altar of Mammon. The majority of them, I say, in the non-union fields, and there is an economic reason for this fact, and that is, that human life is cheaper in the non-union field than it is where the men are organized. (Applause.) Cheaper than props, cheaper than safety appliances, and in their mad desire to wring profits from the sweat and blood of these industrial slaves, they lose sight of all protective measures."

Mr. Drinker: I want to recall Mr. Bache

FRANKLIN BACHE, recalled as a witness in behalf of plaintiffs, having been previously sworn, testified further as follows:

Redirect Examination

By Mr. Drinker:

Q. Yesterday I asked you about a strike at Spadra, and I stated or asked you what the issue was, and I stated the year of 1910, and I meant 1911. Is your answer the same?

A. Yes, sir.

Q. You were going to get some data about the leases, too. Have you the data I asked you to get yesterday?

A. On acreage and tonnage?

3115 Q. What we want to know is the total acreage, how much was leased and owned in fee, and how much coal was on each, and how much had been mined out.

A. As a whole, or separately?

Q. Any way you want, so we get the information.

[Q.] The Hartford Coal Company owned 320—

Q. Can you give the total, I don't want each company.

A. The total acreage was 2,715, underlaid by coal, 2,252 acres. Mined out July, 1914, 462 acres, remaining unmined 1,790 acres.

Q. Of the remaining unmined, how much was leased and how much was fee? A. 600—

The Court: He can not possibly state that, but he can state the entire block.

A. I can not state the unmined, but the mined owned in fee, was 938 acres, and 1777 acres of leases.

Q. How much of the fee and lease was coal? How much was underlaid with coal? What we want to find is how many tons of merchantable, minable, unmined coal there was there in January, 1914, and how much was on the lease and how much on the fee land? If you can give that, how much unmined minable coal was there on this fee property, in tonnage, in 1914, before the properties were destroyed?

A. Give me a pencil and I can tell in a few moments. Seven million tons leased, two million tons fee

Q. That is the tons of coal on the property at the time of the battle, that were minable, and had not been mined?

3116 A. Correct.

Q. That does not include the part of the coal that you said yesterday would be left in the ground because nobody could get to the coal?

A. No, sir, that is the coal under ordinary mining conditions that we could recover and sell.

I want to make another statement, of the rifles we purchased during this trouble, upwards of 40 were purchased by us and given or furnished to the United States deputy marshals.

Cross-Examination

By Mr. Warrum:

Q. Were they given to the marshals or left there when the marshals left?

A. They were left there when the marshals left, and remained in our possession, except a few that the marshals took home with them.

Q. You furnished the guns to the marshals, did you?

A. Yes, sir.

Q. And did you also pay the marshals?

A. No, sir.

(Witness excused.)

Mr. Drinker: The plaintiffs rest.

The Court: The plaintiffs rest, proceed with your defense.

Mr. Warrum: The defendants would like to file two motions; we file them separately for convenience, and they are in writing.

The Court: The motions may be filed at this time. The demurrer to the evidence, as cases in this court are
3117 tried according to the rules of common law, and they have no such practice there which only brings before the court the evidence of the plaintiff, and any evidence you may have I will hear you, and then I will hear the motion.

Mr. Warrum: We thought the motion to dismiss brought the matter up directly.

The Court: I will hear you at the close of the evidence.

Mr. Warrum: They are overruled at this time?

The Court: Yes, sir.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

3118 Defense.

Whereupon the defendants, to sustain the issues on their behalf, introduced evidence, oral and documentary, as follows:

Mr. Warrum: It may be that we should have anticipated this, but we will have to have a minute or two to get ready, and I believe it will save time.

We will read from the testimony of WILLIAM GREEN at the former trial, found beginning on page 2505 of the record.

The Court: That comes in under the stipulation made by counsel?

Mr. Warrum: Yes, sir. (Reading):

"Direct Examination

By Mr. Warrum:

Q. State your name to the court and jury.

A. William Green.

Q. What official position do you hold in the United Mine Workers of America, the International Oganization?

A. International Secretary-Treasurer.

Q. How long have you held that position?

A. Well, about five years.

Q. What position, if any, did you hold before that time, in either the International Organization or any district organization?

A. I served as President of the Ohio District for four years and International Statistician for some time following.

Q. Your home is in Ohio?

3119 A. Yes, sir Coshopton, Ohio.

Q. What was your occupation? A. I worked in the mines

Q. Your deposition was taken in this case, was it not, Mr. Green? A. Yes, sir.

Q. You are the Mr. Green who deposed in this case in September, is that right? A. Yes, sir.

Q. I want to ask you now, Mr. Green, what, if any moneys were paid out by the International Organization on account of the labor controversies between these plaintiff companies and the miners at Prairie Creek or in the Hartford Valley, either before or after the institution of this suit?

A. None whatever.

Q. There has been a certain extract offered from plaintiffs Exhibit No. 191, which purports to be the Fifth Semi-Annual Report of Fred W. Holt, District 21, from April 1, 1914, to September 30, 1914, in which is found the item to

which I call your attention: 'National Organizer, $810.26.' I wish you would state whether or not District 21 paid out any funds on behalf of the National Organizers in 1914 or at any other time? A. District 21?

Q. Yes. A. No, sir.

Q. Did they ever pay out any funds or moneys, salaries or expenses for National Organizers? A. No, sir.

3120 Q. Who pays for National Organizers, either their expenses or salaries?

A. I pay them as International Secretary-Treasurer of our union.

Q. Can you, by looking at that item, offer any explanation of it? A. I feel sure that I can.

Q. What is the explanation, Mr. Green?

A. The explanation I make of this item is as follows: occasionally districts will loan their district men to perform services as International Organizers or field workers for the International Union, and in this instance District 21 loaned to the International Organizer a man to perform services in Colorado.

Q. Was a strike going on in Colorado during the year 1914? A. Yes, sir.

Q. Did District 21, and other districts, contribute men to help organize these men and carry out the strike in Colorado?

A. Yes, sir.

Q. And they loaned some of the District Organizers to the National Organization for its work in Colorado?

A. Yes, May I explain? For instance, District 12, Illinois, loaned the International Organizers six men to do work in Eastern Tennessee and Kentucky six weeks ago, during a strike in that territory."

Mr. Lucas (reading): "Cross Examination

By Mr. Drinker:

Q. Mr. Green, at the time of this Prairie Creek strike, District 21 owed the International Organization $75,000, did it not?

3121 A. I am not sure whether they owed us that amount of money at that time or not.

Q. I mean you owed them?

A. We owed District 21, but I can tell you how it came we owed them that money.

Q. Do so, if you please.

A. That money was borrowed for the purpose of paying the expense incurred during the time the strike was on in Colorado and eastern Ohio. In eastern Ohio we had 14,000 men in

strike fourteen months and we fed and took care of those men during that period. And in Colorado we had some four or five thousand men, and we took care of them and their families during that time.

Q. During this period from April to September, 1914, the International Organization was subject to very, very great expenses, was it not, in connection with Colorado and Ohio?

A. Yes, Colorado and eastern Ohio.

Q. And the districts from all around, that had any money, were helping out the International Organization, to run those matters that we have referred to?

A. We borrowed money like any business institution. We borrowed money from banks as well as from districts.

Q. How much did you borrow from banks?

A. Well, we borrowed $25,000.00 in one instance from the First National Bank of Indianapolis and gave our note for it.

Q. How much approximately in April, 1914, did you owe to all of the districts?

A. I can not give the figures exactly, but we [kwed] the Illinois District, District 12, about $250,000.00.

3122 Q. Well, could you give an approximate estimate of all of it together? * * * * *

Q. Who was the organizer that you say District 21 loaned to the National?

A. I can not recall what his name was, Mr. Drinker, but District 21 did like other districts, loaned men to the International Organization and then they paid them for their services."

(Witness Excused.)

Mr. Warrum: We next offer the testimony of ELSIDORE MCCOLLOCH, who was called as a witness in the former trial, and will read from the former record, beginning at page 2508.

(Reading):

"Direct Examination

By Mr. Warrum:

Q. State your name to the court and jury.

A. Elsidore McColloch.

Q. Where do you live, Mr. McColloch?

A. I live in Menongahela City, Pennsylvania.

Q. What is your business?

A. I am in the insurance business at the present time.

Q. Have you been a miner? A. Yes, sir.

Q. Do you work in the mines? A. Yes, sir.

Q. A member of the United Mine Workers of America?
A. Yes, sir.
3123 Q. What official position, if any, did you hold in any of the districts or in the International Organization?
A. Well, I was president of the southern field in Ohio, and president of Michigan for three years, International Board Member for five years and International Vice President for one year.
Q. What year was it that you were International Vice President? A. 1909.
Q. Did you ever take part as a member of a convention, or as a delegate of the United Mine Workers of America in any joint interstate conference of the Central Competitive Field?
A. Yes, sir, in all of them, but the 1898 convention in Chicago.
Q. Beginning with 1899 you took part in all of them up to what time? A. Up until the last one.
Q. I will ask you if you also spoke in those conventions from time to time, took part in the debates? A. Yes, sir.
Q. How long would they last on an average?
A. You mean the convention or the debates?
Q. The joint conferences.
A. Well, some of them would last as much as about three weeks.
Q. Did any of them adjourn without agreements?
A. Yes, sir.
Q. Did any of them adjourn to meet again and work out agreements? A. Generally so.
Q. How were these conferences begun with reference to the submission of any demand on the part of the min-
3124 ers or operators?
A. Well, they generally always,—I think invariably so,— we started by the miners presenting their demands in a written form to the operators. After the operators investigated those demands they would present counter demands and finally it would reduce itself from the floor of the convention to a committee composed of representatives from each of the four competitive states. And finally, before a settlement, it would be reduced to a sub-committee. Settlements generally always took place in sub-committee.
Q. And would that be referred back then to the convention?
A. Yes, that would be referred back to the convention for ratification.
Q. When that agreement then was entered into by the representatives of the miners and operators, what was done with

it with reference to referring it back to the United Mine Workers membership?

A. Generally it was referred back to the membership for ratification.

Q. Now, following the submission of the miners demands, what took place with reference to debates and discussions?

A. In what way do you mean?

Q. Well, would there be debates and discussions?

A. That would be about all there was most of the time.

Q. Were there any agreements, secret agreements or other agreements, entered into at those conferences, other than the agreements signed by the representatives of the operators and of the United Mine Workers, and submitted them to the
3125 mine workers membership?

A. No, sir, not that I ever knew of.

Q. State what, if any, understanding, agreement, or collusion existed or was entered into between the representatives of the United Mine Workers of America, and the Union Operators of the Central Competitive Field, at such joint conferences as you attended, looking to the interference with the production and commerce of non-union coal in West Virginia, and elsewhere? A. Not any that I ever knew of.

Q. Did you ever hear of any such agreement having been entered into by the United Mine Workers, their representatives delegates in these conferences, and the union operators, or the mine workers ever having entered into any such combination, conspiracy or collusion between themselves?

A. No, sir, there was never any such to my knowledge."

Mr. Lucas (reading): "Cross examination

By Mr. Drinker:

Q. Mr. McColloch, at these joint conferences the operators' representatives were continually, were they not, urging the miners to get West Virginia organized, to protect them against the,—what they called the unfair competition of West Virginia?

A. Yes, sir. It was a good deal like the fellow that prayed for work and went hunting work and prayed he would not find it.

Q. And the miners, in answer to that, stated to the operators, that they were doing the best they could, but they were up against it and they could not go far as the operators
3126 would like them to in that connection? A. Yes, sir.

Q. That was continually the discussion, was it not?

A. Yes.

Q. And the operators would say, 'Unless you can get West Virginia organized we cannot keep paying the wages you are asking us to'? A. That is true."

Mr. Warrum (reading): "Redirect Examination

By Mr. Warrum:

Q. They did keep on working their mines, did they not, after they would use these arguments? A. Yes, sir.

Q. And when you answered Mr. Drinker that it reminded you of the man that prayed for work and went hunting for work and prayed that he would not find it, I will ask you with reference to these discussions, what you know about the operators in the central competitive fields sitting in these joint conferences who owned at the same time non-union mines in West Virginia.

A. They have been accused of that repeatedly in conventions, and they never denied it.

Q. Were they accused in these conferences?

A. They have been accused in the joint conferences, in debate, of owning operations in West Virginia, and while arguing for the organization of West Virginia and bringing up the standard of West Virginia, they were doing all they could to keep the men unorganized. It was simply a matter [kf] debate and argument. There never was any real desire
3127 on the part of any of the operators to organize West Virginia. If they had not had that argument, they would not have known what else to have. The Sunday Creek Coal Company, the Mark Hanna interests, were supposed to own mines in West Virginia, and the Pittsburgh and Buffalo.

Q. Did they own non-union mines in West Virginia?

A. I do not know whether they are organized are not; at time they were non-union.

Q. And did they have representatives sitting in these conferences making arguments?

A. They have representatives from the organized fields.

Q. And they owned mines in both fields, the union and the non-union? A. Yes."

Mr. Lucas (reading): "Recross Examination

By Mr. Drinker:

Q. There were a number of operators that did not own such mines? A. Yes, sir.

Q. And when those operators were accused of having mines in both places, didn't they for the the most part answer

that they had to go to West Virginia to make some money, that they could not make it anywhere else?

A. Yes, they made that argument."

(Witness Excused.)

3128 Mr. Warrum: We offer the testimony of FRANCIS FEEHAN, a witness at the former trial, found in the record beginning at page 2512.

Direct Examination

By Mr. Warrum:

Q. State your name to the court and jury?

A. Francis Feehan.

Q. Where do you live?

A. Castle Shannon Pennslyvania.

Q. What is your business now?

A. At present Supervising Inspector of the Pennsylvania Department of Labor.

Q. Is that a state official position?

A. Yes, sir.

Q. How long have you been in that office?

A. For about four years.

Q. What was your occupation before?

A. Coal Miner.

Q. Have you ever been a member or officer of the United Mine Workers of America, or any of its district organizations?

A. I was President of District No. 5 of the western part of the state of Pennsylvania for a period of over six years.

Q. Ever held any position in the International organization? A. No.

Q. What is the six years that you were President of your District? A. 1906 and 1912.

Q. Did you ever take part, as an officer of your District or as a representative of the United Mine Workers in
3129 convention assembled, in any of the joint interstate conferences held in the central competitive field with union operators?

A. I represented District No. 5, what is known as the Western Pennsylvania District, in the joint conferences of 1906, 1908, 1910 and 1912.

Q. What was the purpose of those joint conferences?

A. The purpose of the joint conference was to arrive at a settlement of a wage scale, to govern the working conditions in districts that were represented.

Q. Do you remember how long the conference of 1906 lasted?

A. I cannot recall the exact length of time, but I do know the conference broke up.

Q. Was there any agreement at that conference at all?

A. No, no agreement was reached; they were unable to reach an agreement, and as a result the interstate joint agreement, or interstate joint conference was dissolved.

Q. It was dissolved?

A. Yes, sir.

Q. How were the contracts made then?

A. The contracts were negotiated by districts, or by the districts signing up with individual operators.

Q. Now, when was the joint interstate movement resumed?

A. In 1908,—three of the states in 1908, three of the four states got together in an interstate joint conference, and it was rehabilitated to that extent.

Q. Illinois being left out?

A. Illinois was not a party to the joint conference.

3130 Q. When agreements were entered upon at these conferences, with reference to miners' demands, how were they executed with reference to them being signed by the representatives of the miners and representatives of the operators?

A. The representatives of the miners signed representing the miners. They entered into the agrement tentatively, to be later submitted to the larger conference, where all the representatives could be present, or to their respective bodies for consideration.

Q. I will ask you if it is not a fact that before 1912 [3699] they were referred back to the convention, and after that time referred back by referendum vote to the members?

A. Yes, sir, that was the usual practice.

Q. Now, do you know of any agreement, besides this one, that was signed at the end of, or at the conclusion of the joint conference and submitted to the United Mine Workers' membership, do you know of any other secret agreement, or any agreement, oral, expressed or implied, entered into between the operators and the miners?

A. There was no agreement other than that to which the representatives attached their signature. Absolutely no agreement, or understanding, that was secret, or that were not put in writing and properly signed.

Q. State what, if any, understanding, agreement or collusion existed or was entered into between the representatives of the United Mine Workers of America and the union operators of the central competitive field at such joint conferences,

which you attended, looking to interference with the
3131 production and commerce of non-union coal in West Virginia and elsewhere?

A. There was considerable discussion about the competitive relations existing between the coal operators who were represented in that conference, and those who were operating in what we call the non-union fields. Many of the operators who were urging for an extension of our organization, and ridiculing the representatives of the Mine Workers, because they could not extend its influence into these districts, owned and operated mines in those fields. We never regarded that argument as being sincere. These conferences are usually discussing the coal situation, but when we meet in conference as we frequently do, many times the coal operators are not desirous of entering into an agreement, and they are watching the market conditions very closely, and frequently it resolves itself into a discussion almost any subject to drag the conference along until the contracts would expire, which then existed, which would automatically put into effect a suspension of work, and then of course the operators had created the condition that they wanted, and the market prices would go up, with the result that they would later enter into an agreement that was done quite frequently, and we always knew that was what they wanted done.

Q. Did these conferences adjourn from time to time to meet later?

Q. Quite frequently they adjourned to meet later because the conditions at that time were not [favorably], as the
3132 operators would say, to entering into an agreement.

Q. Now, you have not answered the question that I directed to you in this question: State what, if any, understanding, agreement or collusion existed or was entered into between the representatives of the United Mine Workers of America, and the union operators of the central competitive field, at such joint conferences as you attended, looking to the interference with the production and commerce of non-union coal in West Virginia or elsewhere?

A. There was no agreement.

Q. Or no understanding?

A. No, no understanding, either.

Q. Something has been said about coal companies having representatives in the joint conference, and operating non-union mines in West Virginia, and calling your attention to that situation, do you know of any coal companies meeting in joint conference in the central competitive field, and operating with union labor there, and operating with non-union labor in Western Pennsylvania?

A. Yes, sir.
Q. Name some of them.
A. Mr. John H. Jones of the Pittsburg and Buffalo Company was usually,—he attended the conference representing operators, and he owned and operated mines in the non-union coal fields of West Virginia. The same is true of Michael Gallagher of Ohio.
Q. Who did he represent?
A. M. A. Hanna Coal Company.
Q. The Mark Hanna Coal Company?
3133 A. Yes, sir, and its mines in the Pittsburgh District and in West Virginia as well as Ohio.
Q. Do you know of any others?
A. I am not so certain about them, but we all thought there was.
Q. Did you ever meet Mr. Moore?
A. Yes, sir, I know Mr. Moore.
Q. Charles Moore? A. Yes, sir.
Q. I will ask you if he had non-union properties in West Virginia?
A. It was stated in his presence that he had interests there and he never refuted the statement; that is all I know about Mr. Moore's interest.
Q. Now, with reference to your statement that the union operators would sometimes prolong the discussion too long beyond the period when the contract ran out followed by an automatic suspension of work, raising the coal market, I will ask you whether or not that situation has been changed by the United Mine Workers of America, and what time it was changed and what its policy is now with reference to a continuation of past contracts?
A. The public suffered so much by that practice that the Mine Workers' organization, through International President John P. White, changed the policy of the organization (3702) to eliminate those suspensions of work, and provided for a continuation of work as long as negotiations were going one.
Q. When did that happen, do you know?
3134 A. That happened after the 1912 joint conference.

Mr. Warrum: That is all.

Cross-Examination

By Mr. Drinker:
Q. Mr. Feehan, do you mean to say that the United Mine Workers of America are solely responsible for having that

clause put in that agreement, and that the operators did not want it in there to avoid a suspension of work?

A. What clause have you reference to?

Q. The clause, providing there would be no suspension on the 1st of April, but that they would go on working until an agreement was reached? Do you mean to say that the miners were solely responsible for that, and that the operators did not want it?

A. No, they could not have any agreement by themselves, the agrement had to be mutual. The miners' representatives, however, were desirous of having that.

Q. Always? A. Yes.

Q. You mean to say the miners' organization in these debates, the representatives of the miners, were continually urging that, and that the operators refused it before 1912?

A. No, not continually urging it, not before 1912.

Q. Is it not a fact that the operators always wanted to have the suspensions obviated, and go on working, and the miners only gave up to it after some time, gave up their right to strike after constant pressure by the operators and

3135 public opinion?

A. No, it [—] not a fact.

Q. What is the fact?

A. It is a fact that the operators were desirous of (3703) suspension of work at times. That is the condition that prevailed, they were desirous of having a suspension at times.

Q. What year can you state when the operators opposed having a clause in the contract providing that there would be no suspension, but that they should go on, and what operators can you tell me that ever urged that in any joint conference, from the beginning until now?

A. I said the policy of our organization changed.

Q. That is not what I asked you, read the question, please?

(Question read by official stenographer as follows:

"Q. What year can you state where the operators opposed having a clause in the contract providing that there would be no suspension but that they would go on, and what operator ever urged it?")

A. I have not said, in making the statement, that they opposed a clause of that kind, but I said they welcomed a suspension of work at the expiration of the contract.

Q. What operator can you name in any of these joint conferences opposing the clause in the contract against the suspension of work on the 1st of April? What operator in what conference from 1898 to the present date?

A. I am not making a statement of that kind, but I say they welcomed a suspension of work at the expiration of certain contracts.

3136 Q. You just guessed that they were glad of it?

A. I know that they welcomed a suspension of work, because it had a certain effect upon the market conditions, and the price of coal went up, and when that market condition was satisfactory then the operators asked for a renewal of the conference, or came at the request of the miners, and we (3704) entered into an agreement.

Q. You mean to say that the operators wanted to have their mines shut down, and their overhead expense going on, and them sitting there not bringing out any coal at any time?

A. I am certain that they did.

Q. What was to prevent them shutting their mines down whether they wanted to, without reference to you or your agreements?

A. [They] was nothing to prevent them, and they did that quite frequently.

Q. Why did they have to get it by reason of this suspension clause? Why could they not shut down in June or July or any other time?

A. There was nothing to prevent them, and they did whenever they desired.

Q. Were you in the 1898 conference?

A. No, I was a member of the organization, but not a delegate to that convention, or attended that conference.

Q. Now, at these joint conferences was it not a fact that the operators were continually urging the miners to get West Virginia organized in order to meet the competition, and that the miners were continually saying, we are doing the

3137 best we can and we could do a lot better if you would turn in and help us?

A. Many times when they would raise that argument the miners' representatives would ask them why they did not withdraw their objections and allow the organization to be introduced at the mines they owned and operated, and while there is a record there showing those matters, we discussed, reference made to the competition from numerous other parts of Pennsylvania and West Virginia, yet the operators would not consent to the organization being established at their mines.

Q. You say there is a record there, what do you mean by the record?

A. Several times the representatives of the miners called their attention that that, that the reason the organization

was not established in West Virginia was because of the opposition from the operators, and those who owned the mines in the central competitive field.

Q. When you refer to the fact that there was a record, where are the records? A. I said,—

Q. (Interrupting.) What does the record consist of?

A. I said it is a matter of record, the representatives of the miners.

Q. You mean in these books (handing witness a book)?

A. Yes, sir.

Q. These books like the one I show you?

A. Yes, sir, interstate joint,—

Q. (Interrupting.) This is the record?

3138 A. Yes, sir, that is the record.

Q. (Showing the witness plaintiffs' Exhibit 200.) Now, coming back to the question I asked you a moment ago, that I don't think you have answered yet, is it not a fact that continually in these conferences the operators were urging the miners to organize West Virginia, and all these competitive non-union states, in order to bring up the cost, and to help out the operators in the central competitive field, and the miners were continually saying, we are doing the best we can, and we would do a lot better if you would turn in and help us? Is that not the gist of things?

A. Not that way. The operators frequently referred to the competition from the other fields, and they expressed themselves as being anxious to have the non-union coal miners in West Virginia organized, for the purpose as they stated of establishing uniform prices and conditions for the employes in the mining industry.

Q. Did they not continually tell the miners that they had agreed to do that, and they had not fulfilled their agreement, and the miners said they were doing the best they could, and if you will help us we can do better?

A. Quite frequently they complained of the conditions in the non-union mines of West Virginia, and it is true that an operator would complain about the prices that the organization sought to obtain at his mine, claiming that he should have a reduction in the price there.

Q. And specially he complained of it in the non-union mines, that the non-union mines were operated cheap-

3139 er than his?

A. In the union fields, too.

Q. And did they not complain more about the non-union fields than the union fields?

A. Yes, sir, I believe they did.

Q. And did not the operators continually tell the miners that they agreed to bring about West Virginia, and you have not done it, and didn't the miners say that we are doing the best we can to bring about the change in West Virginia, and if you will help us instead of hampering us we can do it?

A. The miners at all times stated in these conferences and to the public that they were desirous of extending the influence of their organization to all the mines in the United States, including Canada. That is the well known policy of the International Union, and they made those statements in joint conferences and other places also.

Q. I have asked you the same question three times.

A. I will try to answer it, I am not trying to evade answering your questions at all.

Q. I don't think you understand me. I want to ask you once more if it is not a [cact] that at these conferences the miners were continually,—or the operators were continually telling the miners that, you agreed to organize West Virginia, and you have not done it. and the miners were continually saying, we are doing the best we can to organize West Virginia, we are doing the best we can, and if you would turn in and help us we could do it a whole lot better?

3140 A. It was said in the manner I have answered your question, by saying, yes, they frequently made the statement that they were desirious of organizing West Virginia.

Q. And the operators frequently made the statement, substantially as I have given it in the question?

A. Yes, sir, the operators complained of competitive conditions there.

Q. Now, with the dozens and dozens of operators at these conferences, there were only a very few that had mines in West Virginia, comparatively? What per cent of all the operators that you knew in the central competitive field do you think or suspect, or have knowledge of, that had mines in West Virginia.

A. I cannot tell about how many, but quite a large number.

Q. Five per cent of them?

A. Yes, sir, I would say more than five per cent had interests in West Virginia.

Q. Name the operators that were represented in these joint conferences, from first to last?

A. Oh, I couldn't tell; they run into the hundreds.

Q. Three hundred, say?

A. I suppose it run over three hundred.

Q. Five hundred?

A. Between three and five hundred, probably.

Q. Now, name the operators that you know had any interest in West Virginia, out of these five hundred?

A. Well, I don't know all the operators, but I was told that a great many operators had interests in coal lands

3142 there, and in development in West Virginia.

Q. I have no doubt that you were told that.

A. This I do know, that the M. A. Hanna interests who operated in our districts had interests developed and were operating in West Virginia. I also know that the Jones interests, the Pittsburgh & Buffalo Coal Company, also were operating there. There are two I know of personally.

Q. Name the rest of them?

A. I couldn't tell you; if I name any other, it would only be on hearsay.

Q. Just talk among you men on the miners' side of the house?

A. It was merely rumored, and the report was circulated generally by both coal men and the miners represented, that they did have interests in West Virginia.

Q. That who had?

A. The other companies.

Q. Which other companies?

A. I was told that the Kuhns did.

Q. Who told you that Kuhns did, what, a miner or operator?

A. A miner told me principally about them.

Mr. Drinker: That is all.

Redirect Examination

By Mr. Warrum:

Q. Were these charges made before the operators, in the presence of the operators, during the course of debate?

A. What charges?

Q. That a number of them had interests in other

3142 fields?

A. Charges were made quite frequently in interstate joint conferences that they did have interests in West Virginia.

Q. Was not this the argument of the miners, that they didn't want them to help organize West Virginia, but wanted them to withdraw their opposition to the organization so that they could organize them?

A. The argument was made by the miners that they could make more progress in organizing West Virginia if the op-

position was withdrawn, and that the operators were not sincere.

Q. And all the debates occurred over the question of the increase of scale, the mining rate, or some other question involved in the miners' demands, is that correct?

A. Yes, sir, all this discussion.

Mr. Warrum: That is all.

(Witness excused.)

3143 Mr. Grant: We next offer the testimony of W. D. Ryan, of Kansas City, as given on the former trial, found on page 2780 of the old record. (Reading)

"Direct Examination

By Mr. Warrum:

Q. State your name to the court and jury?

A. W. D. Ryan.

Q. Where do you live, Mr. Ryan?

A. Kansas City, Mo.

Q. How long have you lived there?

A. Eight years.

Q. Where did you live before that time?

A. At Springfield, Illinois.

Q. What if any official position under the Government of the United States do you hold now, if any?

A. I am Safety Commissioner of the United States Bureau of Mines at the present time.

Q. How long have you held that position, Mr. Ryan?

A. About four years.

Q. What was your occupation before that?

A. For the five years from 1909 up until the time I took the position with the Bureau I was Commissioner for the Southwestern Interstate Coal Operators' Association.

Q. Before that time were you connected with the United Mine Workers of America in any of the district organizations, or the International organization?

A. I was about 12 years Secretary-Treasurer of the Illinois branch of the United Mine Workers and one year International Secretary.

Q. One year you were International Secretary?

3144 A. Yes.

Q. And about 12 years you were connected with the Illinois District, is that right?

A. Yes, sir.

Q. Were you a miner by occupation?

A. Yes, sir.

Q. Were you a member of the interstate conference held in the central competitive field at Chicago in 1898?

A. Yes, sir.

Q. What district did you represent?

A. I was Secretary-Treasurer at that time of the Illinois Mine Workers and a delegate to that convention.

Q. Now, what conferences in the central competitive field joint scale conferences, have you attended since then?

A. All of them up to and including 1908.

Q. As a representative of the Southwestern Interstate Coal Operators' Association, have you attended any of the conferences in the Southwest District?

A. All of them from 1910 to 1912. There was two when I was with them when they made a joint contract.

Q. That interstate conference includes three districts, as I understand it, the district of Kansas, the district of Missouri, and the district of Arkansas, Oklahoma, and Texas?

A. Yes, sir.

Q. I wish you would state whether or not there existed any agreement, [understand], and combination or collusion between the union operators or their representatives and the United Mine Workers of America and their officials or delegate representatives, at any or all of these joint con-
3145 ferences, looking to the interference with the production and commerce in non-union coal?

A. Not that I know of."

Mr. Warrum: Take the witness.

Mr. Drinker: No questions.

Mr. Lucas: No cross-examination.

Witness excused.

Mr. Grant: We next offer the testimony of HARRY N. TAYLOR of Kansas City, as given on the former trial, found on on page 2768 of the old record. (Reading)

"Direct Examination

By Mr. Warrum:

"Q. State your name to the Court and jury.

A. Harry N. Taylor.

Q. Where do you live?

A. Kansas City, Missouri.

Q. What business are you engaged in?

A. Coal operator.

Q. Where are your coal mines located?

A. In Iowa, Missouri, Kansas, Arkansas, Oklahoma, and Wyoming; and I have interests in Illinois.

Q. What is the name of your mining companies?

A. Central Coal & Coke Company is the principal company, and we have other companies; the Taylor Coal Company and North Central Coal Company, and the Harkless Coal company.

Q. How long have you been engaged in operating coal mines?

A. I have been in the coal business since 1882; in my early life I did not operate, but I have been connected with
3146 the business since 1882.

Q. Have you been connected with the movement in the central competitive field, which resulted in joint conferences on wage agreement?

A. I was the signer of the original call that brought up the first interstate agreement in Chicago, in 1898; the call was issued in Columbus, Ohio, in 1897, by the operators of four states, as I recollect it. Do you care for the names of the people in the call?

Q. It is not necessary to give the names.

A. The call was issued in December 1897.

Q. And called for what time?

A. We met at Chicago in January 1898, as I recollect the month.

Q. Were you a member of that conference?

A. I was a member of that conference.

Q. Do you remember any of the other members of the conference that are living, operators?

A. I went over the list in my memory the other day, and I don't believe there is an operator that signed that original call for that convention, except myself, that is alive; I cannot recollect any operator who signed the original call as now living, except myself.

Q. What joint conferences since then have you attended in the central competitive field?

A. I attended each and every conference up until 1912 of the interstate conferences of the central competitive field, and since that time I have attended the conferences in the southwest, as I left Chicago and came to Kansas City.

Q. Before 1912 did you attend any conference in the southwest district?

3147 A. Not through the continuous scale making.

Q. But since that time you have?

A. Since that time I have.

Q. Now, Mr. Taylor, I wish you would state what if any contract, collusion, combination, agreement or understanding existed or was entered into at any of the conferences, so far as you know, between the miners, their officers or delegates and commerce of non-union coal from West Virginia or elsewhere?

A. There never has been any collusion or understanding of any kind to my knowledge between the operators and the miners, interfering with the production of non-union coal in any district, West Virginia, or anywhere else.

Q. Was there any such understanding or agreement entered into in Chicago in 1898?

A. There was no understanding entered into in Chicago in 1898.

Q. Calling your attention to the conferences that you testified you attended in the southwest district, I wish you would testify whether there was any confederation, collusion, understanding or agreement existed in any of those conferences between the union operators or their representatives, and the representatives and officers of the United Mine Workers.

A. Since I have [attnede] the conferences of the southwest I have never heard the matter of non-union coal discussed, and there has never been any conference on that subject, or no collusion or agreement made between the [moners] and operators of the southwest."

Mr. Lucas: (Reading)

3148 "Cross-Examination

By Mr. Drinker:

"Q. Mr. Taylor, you are familiar with the volumes which contain the official report of the joint conferences of miners and operators?

A. I have seen them and read them at numerous times, but not the last year or two.

Q. You know that the miners and operators did have these conferences, such as are reported in these reports, such of the ones that you attended?

A. I know that the reports, as I have seen them bound up, and I suppose they are similar copies to those, of the stenographic records of these meetings which I attended, and heard the discussions at the meetings.

Q. And these reports contain all those discussions, and what was said, and what was said by both the miners and operators?

A. They do as far as I know; of course, I don't remember that they have everything, I have not checked them at all.

Q. You have seen them frequently, however, used in subsequent conferences by both miners and operators as the record of what was done before?

A. I don't know that I have seen them in that sense, but I have seen them referred to, and have referred to them myself.

Q. As a record of the previous conference?

A. Yes, sir, as a record of the previous conference.

Q. And that was done in all of these conferences from 1898 to 1912, and when there was any question come up as to what was done at a previous conference, those records were referred to?

3149 A. I will say, as near as I can, in answer to your question, that for instance, if some statement had been made, probably at a previous convention by some operators or miners, and it was referred to, and exceptions taken, it might occur that they went back to the record, and looked it up on it, but I don't think as a regular practice they made a practice of using those records except to clear up a disputed statement from time to time, and I do remember occasions when such things did occur, but I don't think it was a practice.

Q. It was a custom, was it not, whenever the occasion arose, for either the miner or operator to refer to the previous debates, in connection with previous contracts, as throwing light on that contract?

A. I should say not; there was a good deal of hot air at those conferences, and nobody really cared what they said as a rule, but if there had been some specific statements made which was afterwards denied, the record was often referred to, but not as the practice or custom.

Q. Now, at these conferences, was it not a fact that the operators were continually referring to the eighth clauses of the Chicago Agreement as imposing on the miners an obligation, to protect them against the competition of non-union fields, particularly West Virginia?

A. I cannot say from memory that they referred to any particular clause, but I know often times it was kind of a horse trading proposition, when we didn't want to advance their wages, when they were asking for an advance, we would advance the argument that they would have to bring West Virginia up in line before they could ask for an ad-

3150 vance, and we used all of the argument that we could to keep from paying an advance, and that was one of the best arguments that we had.

Q. You remember the clause, the eighth clause, reading "That the United Mine Workers' organization, a party to this contract, do hereby further agree to afford all possible protection to the trade and to the other parties hereto against any unfair competition resulting from a failure to maintain scale rates"?

A. Failure to maintain scale rates?

Q. Yes.

A. I can't say the number of the clause, but I remember that.

Q. And you remember it was frequently discussed in the subsequent meetings, by both the miners and operators?

A. Yes, sir, I do in this way,—may I be permitted to make an explanation?

Q. Certainly, explain all you want to, relevant to this."

Mr. Lucas: "We offer the remainder of the Cross-Examination, but waive reading it.

The Court: Very well.

A. And I must explain it if you want my answer; it is a little hard thing to say, In 1897, we had been through a long and an enormously costly struggle, and the coal operators were on the verge of bankruptcy, and the miners were practically starving in many districts: and in Illinois where I was particularly interested, there had been seven months I think, of suspension of work, and there was no organization of the operators or miners in Illinois at that time. The Northern Illinois field, Grundy and Drury Counties had an organization of the miners, and there was a little organization of
3151 miners, and there was a little organization around Danville, Illinois, and other than that it was free for all, both miners and operators, and might made right. The thing had been so abused, the privileges on both sides, that the inevitable conflict occurred, and after they had been idle for [minths] and months, until bankruptcy over took the operators, and starvation the miners, they got together in a conference, and the result of that conference was a meeting called in Columbus, Ohio, at which the representatives from Penn. the Western part of Pennsylvania, Ohio, Indiana, and part of Illinois were present. After a discussion there, it was agreed that it was far more sensible for men to meet and discuss the wage problem and the competitive conditions than to strike six or eight months until everybody was starved out financially and physically, and then meet and agree, when everybody was in a bad humor and angry mood. And

we agreed, beginning with that time, to turn over a new leaf, and call a conference, and discuss our matters jointly, and allow all the operators to have a voice in what his competition would be, and allow all the miners to have a voice in what they would get, and the work would go into its natural channel, and the men get the work that belonged to their district, and the operators sell the coal that belonged to their district. I was with that theory in mind that that conference was called, which is now known as the Interstate Agreement, by which the miners, the employer and employee, would counsel together, and arrange basic rates. Now, the Hockin Valley was the basing point in Ohio, but there was four or five other districts in Ohio; the Western Pennsylvania was the the bas-
3152 ing point in Penn. but there were several other points in Pennsylvania. Indiana was one district, except the Indiana Block, which was a separate district on account of the nature of the coal. Danville was made the basing point in Illinois. In order to bring about protection for other operators who saw the wisdom of counseling first, rather than fighting first, and then counseling, they asked the miners if they would join with them in a general plan as a humanitarian and businesslike proposition, that they would protect them if they failed through argument and reasoning, to bring the operators in their own district into such an agreement. When we first started in 1898, although every state was represented by certain representation of each state, we did not have all of the operators in the states in accord with the other operators, in this movement. In the State of Illinois, which has nine districts, we (seggregated) the state into nine districts, based on the thickness of the coal, the freight rates, and the mining scale, and after we agreed on an interstate agreement in Chicago, a meeting was called in Springfield, Ill. for the state of Illinois, and there the competitive rates were discussed, and many men in the State of Illinois, although they did not come into the association until after the state meeting was held, did come in then and the second year more came in, and after that plan was worked out, and it was demonstrated that the human plan was the best plan, more operators came in, and as I recollect it, that eighth clause was enacted to protect the operators in their own state. Those that had wisdom to see that it could be better done by argument and discussion first as against those that still thought that
3153 might made right was the proper course, and I am glad to say, that after a number of years practically all of the operators saw the human side of it, and came into this in-

terstate agreement. But it took several years to work that out from the chaotic condition that existed in 1897.

Q. When you got together in 1898, previous to that, you had been fighting among yourselves, and had ruinous competition among yourselves, that forced the price of coal down to where you could not live, and you were all bankrupt and the miners had competition among themselves, forcing wages down, and you decided to get together and eliminate some of that cut-throat proposition by means of this agreement?

A. Before the agreement was made in 1898, back in 1886, I attended a conference in Columbus, Ohio, which was then known as an interstate conference, but it was only fragmentary; there were only certain little districts participated in that argument. John McBride at that time was the [had] of the miners, and on account of that being only fragments of states, it fell apart, it did not have strength to maintain itself.

Q. I think we are going a little far back, and I want you to get around to the question.

A. All right, I meant to bring that about. It fell apart, and there was no organization between operators and miners, or no understanding between the operators themselves or the miners themselves, and every man that could get a contract would go to his men and ask them to take less wages, so that he could sell his coal, and if they didn't agree to take
3154 it they would try to freeze them into it, and if the miners thought they could get more money than they were offering, they struck, and that condition was starving the miners and breaking up the operators, until these men thought that the only sensible human plan and business-like plan was to do our arguing first, and fighting afterwards, if it was necessary to fight, and for many years, we avoided that system of starvation and bankruptcy, by these trade agreements, and we bettered the condition of the men employed in the mines, and bettered the business-like and financial condition of the operators.

Q. Now as a result of that in 1898, and as it continued later, the miners wages were considerably increased?

A. Yes, sir, considerably increased, and the conditions of employment were even bettered.

Q. And in spite of that the operators were enabled to get enough for their coal to pay the increased wages and still make a living?

A. By having these discussions or trade agreements, the coal found its more natural market.

Q. And they would get more money for it?

A. They got enough more money for it in its natural market, rather than its forced market, so that they could pay more wages, and give the men better living conditions.

Q. And at the same time there were other operators and miners, who were in competition with them in the arrangement, and who did not come in, and were still trading on a lower cost?

A. There were; and they were still battling and fight-
3155 ing with each other on the old method.

Q. What way did the miners what were they to do, in order to protect the operators in the central competitive field?

A. To have the miners take the same scale rate from other operators as was paid in the other fields.

Q. In other words, the miners would organize other fields, and get the operators to come up to that scale?

A. They were to organize and come up to it or stop taking premiums. In many cases, the operators would lay idle all summer, and in the fall would pay a premium to the miners, and in that way steal the men away for a few months from the operators that paid the scale all of the whole year, all the way through, and the miners pledged themselves that all of their members would not take these premiums, but would take the scale rate, and would not work for operators that were coming in for a month or two in the fall, and taking the men from the mines that ran twelve months in the year. That was one of the things.

Q. Now, before the fall of 1912, as I understand, the arrangement between the operators and miners in the central competitive field, was that the miners, if they did not get an agreement by the first of April, there would be a suspension and that would last several weeks, but as I understand it, in 1912, they eliminated the suspension, and worked pending the arrangement. Now, did the operators, to your recollection, ever favor, or try to bring about these suspensions, on the first of April, prior to 1912?

A. They did prior to 1912, but it was so far before
3156 that. It was prior to 1898. In 1898, before this arrangement was made, the operators in Ohio, who shipped their coal in the summer months to Duluth, and West Superior, and the stocking points on the Great Lakes, if they had a light winter and had not moved all of the coal out of stock on those docks, that action called for a suspension, which occurred until the coal would be moved, but with the making of the agreement in 1898, that class of ruinous competition was eliminated.

Q. Then after 1898, the operators were glad to avoid a suspension?

A. 1898 every effort was made to keep the mines in as continuous operation as possible.

Q. By the operators?

A. By the operators and miners.

Q. If there was a suspension on April 1st, pending an agreement, was it at the instigation of the operators?

A. No, sir, it was simply the elimination of the contract; I cannot name the exact years, but on one or two occasions, the process of making the new contract was dragged along so the old contract expired before the new one was made.

Q. The operators did not deliberately drag it along?

A. No, they could not agree.

Q. Was not the real reason that they stopped that practice and made the things run along, that both the operators and miners realized that the coal from West Virginia, and other competitive fields, would come in and take the market away, and their market was gone?

3157 A. No, sir, that was not the real reason, because I stated early in my testimony that we applied reason and common sense.

Q. I don't mean in 1898, I am talking about 1912.

A. And I am talking about 1912. We kept learning as we went on, and we found from time to time the weak points in our agreement, and corrected them as we could, by mutual consent.

Q. You did find in previous years, when you made the suspensions, that the West Virginia people were happy about it, and were coming in and taking your market away?

A. I never talked to West Virginia people, and don't know whether they were happy or not, but I know that we lost money every time the mines were suspended.

Q. And you found when you got through, that part of your market was taken away from you?

A. I will say for your information, that in the part of the country that I operate, West Virginia don't cut any figure whatever.

Q. What field does Illinois compete with?

A. In the west, with,—Illinois really competes with everything west of Illinois, Iowa and the southwest.

Mr. Drinker: That is all."

Mr. Grant: (Reading:)

"Redirect Examination

By Mr. Warrum:

"Q. Now, you have said something about these debates containing a great deal of hot air. They usually opened the joint conference by a statement of the miners' demands, did they not?

3158 A. That was the general form of opening.

Q. And then the operators sometimes would respond with the operators proposition?

A. The operators would oftentimes put in a counter-demand.

Q. Then these debates would last, and cover a long period of time?

A. In the early days of this joint movement, they used to have big conventions, at which there would be several thousand miners and operators present, and we had some operators and some miners too, that wanted the people on both sides to know what they knew about the coal business.

Q. And the conference concluded with some contract, when they agreed on anything, it was a written contract?

A. After the speech making of the first day or two the conference was concluded, they would sub the committee down to a scale committee, representing the miners and the operators jointly, and those committees would retire from the general conference, and there was no record kept of their action, or their meeting, they didn't keep a stenographer in there, because they determined, if a record was kept of every word said, that they would not reach an agreement, because neither side would talk as freely as they would without it, and the real work, of these conferences was done in the scale committee, and these records that have been put in here are absolutely of no conferences whatever, because that was the open talk, and as I said, hot air, and the real work was done in the conference committee of the scale committee.

3159 Q. Now, what would the conference committee do in regard to referring it back, an agreement?

A. When they finally reached an agreement in the scale committee, they would bring it back to the general conference, or to the convention for ratification.

Q. Was that reported in the form of a joint scale agreement for that ensuing two years?

A. Yes, sir, and that would go into this record, but when I say that, that is all, and the talk there had nothing to do with the making of the agreement.

Q. Now after that agreement was made, what if anything, was done before it became binding, with reference to referring it back to the annual convention of the miners of the United Mine Workers or after 1912 to a referendum vote of the miners?

A. The miners' convention was generally held prior to the joint conference, and the miners would appoint their scale committee, and map out the policy they desired to follow, before they met the operators, and after they met the operators, and the joint scale committee, and they reached an agreement, that became the agreement, and then each side went back home, and made its detailed agreement at home, among its own operators and miners, as to the details in each district.

Q. Do you recall, Mr. Taylor, whether or not before 1912, the convention of the miners would re-convene for the purpose of ratifying or approving this agreement, and whether or not since 1912 it has been referred back to a referendum vote of the miners?

3160 A. My recollection is that in all the early conferences, the convention being in session, ratified the agreement, but in later days, in the light of economy, instead of keeping several thousand men idle for a week or two in a strange city, they simply meet as a committee and then send the agreement back for a referendum vote rather than keeping the convention in session.

Q. Was there any years during which there was no agreement consummated at all?

A. My recollection is that it was the year 1908, that the conference broke up without reaching an agreement, and that the agreement was made by states, I am not quite certain that was the date.

Q. There was one period?

A. Yes, sir, when they did that.

Q. How long did that last, before the interstate movement was reconvened?

A. The interstate movement was disorganized, or broken up as an interstate movement until the year 1912, and Mr. White came out and met me in Missouri, at Higbee, Missouri, and I was at the time President of the Illinois Coal Operators Association, and asked me if I would join him in an effort to reestablish the interstate movement, and I told him I had always been a believer in the common sense method of trade agreement, and that I would be glad to help him, and I called a meeting in Chicago of the operators of the same states that had formerly met, and at that conference we agreed with Mr.

White that there would be a new call issued for an in-
3161 terstate movement, and the interstate movement was ratified in 1912, and the settlement in Cleveland, Ohio, of 1912, was the last conference that I attended as an interstate meeting, because after that, the next conference, I was in the southwest, and no longer president of the Illinois operators.

Q. Did you ever hear it stated in the convention or proceedings by the miners in reply to any position taken by the operators in regard to their objection to increase of the wage scale on account of the West Virginia competition that there were operators in that conference operating non-union mines in West Virginia?

A. In the early days of the conference, as I stated early in my testimony, we used West Virginia as a bugaboo in our effort to keep from paying any advance in the wages, and it was not a great many years until many of the operators, among them the company I was connected with, purchased interests in West Virginia. Two-thirds of them had interests in West Virginia. And the miners finally took the position, "If you gentlemen will bring your West Virginia mines in here and quit talking about it, we won't have any trouble", and I know there were several operators, among them the Sunday Company and the Pittsburgh Company, who were operating in West Virginia, W. P. Reed and others; and the operators had to back down from their argument because they had to come in with their West Virginia mines or shut up."

Mr. Lucas: We offer the recross examination, but waive reading it.

3162 The Court: Very well.

(The Recross Examination of the witness is as follows:)

"Recross Examination

By Mr. Drinker:

"Q. When you say two-thirds, is that a conservative estimate? A. Of what?

Q. Two-thirds of the operators in the joint conference?

A. Oh, no, I meant of our little sub-committee, not the big convention, but the men in the inner councils around the table.

Q. I thought that was a little strong, Mr. Taylor.

A. I want to emphatically correct that if I said it. I meant the men around the table, the men that went into the inner conference. There was W. P. Reed and J. S. Morton and Mr. Robbins, who were the leaders in the sub-committees. Those

conventions were generally subbed down to one or two men from each state, and two-thirds of them held interests in West Virginia.

Q. And how many of them, Mr. Taylor, had mines in West Virginia?

A. Not many, only the principal ones.

Q. The very big companies had subsidiaries in West Virginia?

A. Yes, the very big companies, and they were the men on the sub-committees of the scale. I am glad you called my attention to that. The men I referred to were the men around the table in those sub-committees.

Mr. Drinker: That is all.

(Witness excused.)"

Mr. Grant: We next offer the testimony of GEORGE WESTWOOD, as given on the former trial. Mr. Westwood is within the stipulation. He is now ill. It will be found on page
3163 2781 of the old record. (Reading.)

"Direct Examination

By Mr. Warrum:

Q. State your name to the court and jury.

A. George Westwood.

Q. Where do you live, Mr. Westwood?

A. At Hartford.

Q. Are you a miner?

A. Yes, sir.

Q. Are you a member of the union?

A. Yes, sir.

Q. Were you a miner in 1914?

A. Yes, sir.

Q. Working at what mine?

A. At the Hoffman mine.

Q. Are you a man of family, Mr. Westwood?

A. Yes, sir.

Q. And how old are you?

A. 54 years old.

Q. How long did you live in that neighborhood?

A. In Hartford?

Q. Yes. A. Since the spring of 1911.

Q. How long have you mined coal?

A. I went in the mines when I was about 12 years old.

Q. Is the Hoffman mine in the group known as the
3164 Prairie Creek district?

A. Yes, sir.

Q. Did you know James Mullen?
A. Yes, sir.
Q. He was an International Board Member in 1914, I believe? A. Yes, sir.
Q. And lived in Midland?
A. Yes, sir.
Q. And he is now dead?
A. Yes, sir.
Q. Did you meet James Mullen the last of April in Hartford? A. I did.
Q. Do you know what date that was?
A. I think it was about the 30th of April or the 1st of May.
Q. The 30th of April or the 1st of May?
A. Yes, sir.
Q. Did you have any arrangement or conversation with him, I will not ask you about the conversation, but did you have any understanding with him with reference to any future meeting you were to have with him on matters you were submitting for his consideration?
A. I did have a date for a future meeting.
Q. State briefly what that matter was?
A. I was inquiring from him in regard to the International constitution.
Q. Speak louder, Mr. Westwood?
A. I inquired from him for the interpretation of the
3165 National constitution.
Q. In regard to what?
A. In regard to the employment of men from other states.
Q. What did he say? Did he give you an interpretation?
A. He told me he did not know whether that matter had ever been before the "National", that he would inquire into it.
Q. Did you have any arrangement with him to see him later? A. I did.
Q. When did you see him?
A. I saw him on the 16th of May.
Q. What position did you occupy at that time with reference to any committees of the local? Were you on the pit committee?
A. I was on the pit committee of the Hoffman mine.
Q. Is that one of the duties of the members of the pit committee, to settle questions of that character?
A. To settle disputes between the mine foreman and the miners.
Q. Now, did you see him on May 16th?
A. I did.
Q. Where did he come from, if you know?

A. Well, he drove up to the mine. He had a rig. I don't know where he came from.

Q. He drove up to the Hoffman mine, did he?

A. Yes, sir.

Q. Did you make any memorandum of that at the time?

A. Yes.

Q. Have you that memorandum with you?

A. Yes, sir.

3166 Q. Produce it, please?

A. Here it is.

Q. What was your purpose in making a memorandum of that day?

A. For the purpose of keeping a record of the amount of time I had lost so that the local union would reimburse me.

Q. Did you keep an item of the time you spent with him?

A. Yes, sir.

Q. You say that was May 16th?

A. Yes, sir.

Q. And what was the business that he was meeting you on, on May 16th?

A. The International constitution.

Q. With relation to this matter you have just testified about? A. Yes, sir.

Q. Did you see him later? A. I did.

Q. On what date?

A. I saw him on the 5th of July.

Q. Where did you see him on the 5th of July?

A. At my home.

Q. Did you at the time make a memorandum of that meeting? A. I did, yes, sir.

Q. What was that memorandum made for at that time?

A. That was for an agreement between me and the other committeemen that it was necessary for us to inquire from someone in regard to our position as committeemen having

3167 expired. Our term had expired and there was unfinished business on hand, and the new committee did not care to take hold of it and I wanted to let go and I wanted to find out where I stood.

Q. You were on the old committee?

A. Yes, sir.

Q. And you were asking that the old committee transact the business?

A. Yes.

Q. And you were insisting that the new committee transact the business.

A. Yes, sir, I did, I wanted to get out.
Q. Was that the subject matter of the meeting that you had with Mr. Mullen on that date?
A. Yes, sir.
Q. How did he happen to come to your house, Mr. Westwood?
A. I expected Mr. Mullen to be at home that morning, on the 4th of July. This matter came up about the first, and I wrote him I wanted to meet him when he came home, and he answered the letter in person.
Q. Do you remember what day of the week that was?
A. I think it was Sunday.
Q. And you were home, were you?
A. Yes, sir.

Mr. Warrum: That is all."

Mr. Lucas: The plaintiffs offer the cross-examination, but waive reading it.

The Court: Very well.

(The cross-examination of the witness is as follows:)

3168 "Cross-Examination

By Mr. McDonough:
"Q. I did not get your first statement, Mr. Westwood. You had a conference with Mr. Mullen, you say?
A. Yes, sir.
Q. Did you state the subject of that conference, the first one?
A. You mean when I met him on the first occasion?
Q. Yes?
A. I asked him for information with regard to the National constitution and he was not able to give it to me at that particular time, but agreed to give it to me at a later date.
Q. Where was that?
A. In Hartford. I happened to meet him in town.
Q. Were you a member of the union at that time?
A. Yes, sir.
Q. And an officer in the union?
A. I was pit committeeman.
Q. In the local? A. Yes.
Q. You were a member of the pit committee? A. Yes.
Q. And the subject of the inquiry related to your duties as a pit committeeman?
A. Yes, sir.

Q. Did you discuss that with the International Executive Board Member? Did you discuss that with him?

A. I did.

3169 Q. The man you knew to be the International Executive Board Member? A. Yes, sir.

Q. And that was James Mullen?

A. Yes, I discussed the International constitution with him.

Q. What date did you say that was you first met him?

A. It was either the 30th of April or the 1st of May.

Q. Either the 30th of April or the 1st of May, 1914?

A. Yes, sir.

Q. And you say you made a memorandum of that at the time?

A. No, sir, I just met him accidentally.

Q. How do you remember that was the time?

A. Because, at that particular time the Cleary investigation was going on and I was on my way up town to it, and that is the reason I remember it.

Q. Was Mr. Cleary there that day?

A. In Hartford?

Q. Yes, on the day you met James Mullen, was Mr. Cleary there?

A. He was there either that day or the day after.

Q. Was Mr. Cleary there on the day Mr. Mullen was there? I mean, were they both in town on the same day?

A. They probably were.

Q. Did you see Mr. Mullen at the Cleary hearing?

A. No, sir.

Q. How did Mr. Mullen get over there?

A. He was in town when I met him. He may have came in a train or drove, I don't know.

3170 Q. You know at that time where he lived?

A. Yes, sir. I have known where he lived for the last ten years.

Q. About how far from Hartford did he live at that time?

A. Between five and six miles.

Q. Where were you, at what place, at what store or house or place of business were you when you discussed the matter with him? A. I met him on the street.

Q. Where?

A. I met him on the street. It was in the summer time.

Q. How long did he stay there at that time?

A. He was with me for probably an hour or an hour and a half.

Q. Where did he go then? A. I don't know.

Q. That was after the riot at Prairie Creek?
A. After the 6th of April?
Q. Yes. A. Yes.
Q. You remember about that riot? A. Yes.
Q. And this time you saw Mr. Mullen there was after that?
A. Yes, sir.
Q. You are certain of that?
A. Yes, sir.
Q. When was it you next saw him, as you testified a while ago in your direct examination?
A. I met him by appointment on the 16th of May.
Q. At what place?
3171 A. At the Hoffman mine.
Q. At the Hoffman mine? A. Yes.
Q. And did you have an extended conversation with him that day, and did you talk to him very long?
A. We had considerable talk.
Q. How long did he stay at Hartford at that time?
A. I don't know whether he went to Hartford or not.
Q. Did he go in the direction of Hartford when he left the Hoffman mine?
A. When he left the Hoffman mine he took the road, and the road branched off from Midland to Hartford, and that was beyond my vision.
Q. So you do not know whether he went to Hartford or Midland? A. No, sir.
Q. And you do not know whether he came from Hartford or Midland? A. No, sir.
Q. Was he in a buggy? A. Yes.
Q. Was anyone with him? A. No.
Q. He came there especially to see you, did he?
A. Yes, we had arranged to meet.
Q. Did you come to Ft. Smith two days afterward to the convention at Ft. Smith?
A. I did not attend any convention for the last ten years.
Q. You were not in Ft. Smith on May 18th?
3172 A. No, sir.
Q. Or on May 20th? A. No, sir.
Q. And you do not know whether Mr. Mullen was here or not? A. No, sir, I don't.
Q. Did you see James Mullens after May 16th?
A. Yes, sir.
Q. And did you make a memorandum of that meeting at the time?
A. Yes, sir, I was attending to union business.
Q. How long was it after that that you saw him?

A. The next time?
Q. Yes, how long after May 16th? A. The 5th of July.
Q. Of the same year? A. Yes.
Q. Where did you see him then? A. At my home.
Q. In Hartford? A. In the east end of Hartford.
Q. What time in the day was it then you saw him?
A. In the afternoon.
Q. Did you have much of a conference with him? Did it last long?
A. The business we had to transact did not last long, but he told me about the latest stories from the East.
Q. I am not asking you what was said, but whether you had a very lengthy conference with him?
A. We were together about an hour probably.
3173 Q. What time in the day was it?
A. In the afternoon.
Q. About what time in the afternoon?
A. I am not positive just what time it was.
Q. Did he come to your house in a buggy? A. Yes, sir.
Q. Was there anybody with him? A. No.
Q. Did he go in the direction of his home when he left Hartford? A. Yes, he went around that way.
Q. When did you next see him?
A. The next time I saw him I met him on the Rock Island train coming east from McAlester.
Q. When was that?
A. I was coming up to Fort Smith some time in December.
Q. Did you make a note of that meeting?
A. No, sir, because that was an accidental meeting, I made no note of it.
Q. Passing to the meeting of the 5th of July, did you make a note of that, a memorandum of that meeting? A. Yes.
Q. And the next time you saw him you think was on the train coming from McAlester to Arkansas? A. Yes.
Q. And that was some time in December? A. I think so.
Q. You did not see him in July after July 5th?
3174 A. Not that I have any recollection of.
Q. And you did not see him in August?
A. Not that I can recollect.
Q. Or in September or October?
A. I may have passed him and did not pay any attention to him.
Q. When you met him on the train, did you make a memorandum of that meeting?

A. No, sir, we just happened to meet and we sat down and rode together as far as we were going together.

Q. You say you may have seen him between July 5th and December but you do not remember?

A. I did not have any business with him and I don't recall.

Q. You do not know where he was from July 5th to July 17th? A. No, sir, I don't.

Q. And you do not know where he was on July 17th?

A. No, sir, I don't.

Q. And the remainder of the month of July you do not know where he was? A. No, sir.

Mr. McDonough: That is all."

Mr. Grant: (Reading)

"Redirect Examination

By Mr. Warrum:

Q. Was Mr. Mullen an old man?

A. Yes, I considered him considerably older than I am.

By Mr. McDonough:

Q. And what is your age?

3175 A. 54.

Q. Mr. Mullen knew you were a union miner, did he?

A. Yes, sir, of course he did.

(Witness excused.)"

Mr. Warrum: We next offer the testimony of JOHN S. CAMERON, as given on the former trial, found in the old record at page 2521.

Mr. Drinker: Is he without the jurisdiction?

Mr. Warrum: He is 108 miles from here.

Mr. Drinker: Just over the line.

Mr. Warrum: We would rather have him here. Is there any question about it?

Mr. Drinker: None whatever. If you say he is without the jurisdiction, he is.

The Court: Proceed.

Mr. Warrum: (Reading)

"Direct Examination.

By Mr. Covington:

"Q. State your name. A. John S. Cameron.
Q. Where do you live, Mr. Cameron?
A. McAlester, Oklahoma.
Q. What is your occupation?
A. In the mining business.
Q. Operating a mine or working in the mine?
A. Coal operator.
Q. Coal operator?
3176 A. Yes, sir.
Q. How long have you been connected with the mining business? A. Since 1890.
Q. Since 1890? A. Yes, sir.
Q. Were you ever at any time employed by the Bache-Denman interests in Arkansas? A. I was.
Q. In what capacity?
A. Superintendent of their Arkansas properties.
Q. Located at what point?
A. Located at Midland and Prairie Creek and Arkoal.
Q. When did you accept employment in those companies?
A. On the 15th day of December, 1913.
Q. December 15th, 1913? A. Yes, sir.
Q. How long did you remain with them?
A. Until the 6th of June, the following year, 1914.
Q. 1914. Did you change the system of working the mines, I mean by that, did you change from the union to the non-union system of operating the mines while you were superintendent? A. Yes, sir.
Q. How long before you made the change did you learn that it was contemplated that you were to do that?
A. About two weeks, something like two weeks.
Q. About two weeks? A. Yes, sir.
3177 Q. Did you write Franklin Bache a letter setting forth the advantages of the non-union operation, just before you went on the non-union basis? A. I did.
Q. Is this the letter, Mr. Cameron?

The Court: Handing the witness the exhibit?

Mr. Covington: What is this exhibit?

The Stenographer: Exhibit 38.

Q. Plaintiffs Exhibit 38,—it appears that you didn't sign it.

A. No, sir.
Q. Who dictated that letter?
A. That letter was practically dictated by,—the substance of the letter was dictated to me by Mr. Bache.
Q. Where? A. In the Goldman Hotel.
Q. Did you write it in the Goldman Hotel?
A. No, sir, I wrote that in the Main Hotel, from notes I made.
Q. Why did you come down to the Main Hotel to write it?
A. At the suggestion of Mr. Bache.
Q. What did he say, if anything, about getting that letter as part of his plans?
A. He told me—I had only known a few hours prior to the time that letter was written that it was Mr. Bache's determination to go on a non-union basis a his mines in Arkansas, and Mr. Bache outlined his policy to me that Sunday afternoon, March 22nd, and we went all over the matter
3178 that was contained in that letter, and he told me that he had to have a letter, that he wanted a letter of that kind to send to some of the people that were connected with him in the business in the east.
Q. You left the mines, or the employ of these companies on the first of June, you say? A. On the 6th day of June.
Q. I will ask you if at the time you left that company, if they had any coal diggers at the mine, people that dug coal?
A. Not that I know of.
Q. You had guards, and things of that kind, detectives?
A. We had guards, and a few that claimed to be coal miners, but I didn't know whether they were or not, because we mined no coal by them when I was there.

Mr. Covington: That is all."

(Cross-Examination read by Mr. McDonough and Mr. Hardin, as follows:)

"Cross-Examination

By Mr. McDonough:
"Q. Mr. Cameron, did you mine any coal up to the 6th of April? A. From the time we went on a non-union basis?
Q. Yes.
A. There was some coal hoisted, but it was mined by men that had been in the employ of the company prior to the time the mine went on a non-union basis. There was no coal hoisted that was mined by the men that went in the employ of the company after that.
3179 Q. What was your statement as to when you were employed by the Bache-Denman Company?

A. December 15, 1913.

Q. You remained in that company's employ until June 6th?

A. Yes, sir.

Q. What was your statement as to the first information that you had that Mr. Bache desired to go on non-union conditions?

A. The first information I had was on Saturday night, about 11:00 o'clock, March 21, 1914, the night prior to the time this letter was written.

Q. Was that the night before this letter was written?

A. Yes, sir.

Q. This was the day before?

A. That was the first direct information I had from Mr. Bache. I had an intimation that this was going to happen perhaps two or three days before that, in a letter from Mr. Finley.

Q. Prior to that time, Mr. Cameron, what experience had you had in the Arkansas and Oklahoma coal fields?

A. I had considerable experience, practically all my experience has been in the Oklahoma coal fields.

Q. That has been for how many years? A. Since 1890.

Q. Since when? A. 1890.

Q. You had had then something over 20 years experience in the Oklahoma coal fields?

A. About twenty-three or twenty-four years.

3180 Q. The conditions in the Oklahoma coal field, especially in the Eastern Oklahoma coal field, from McAlester eastward, are similar to the conditions in the Hartford Valley field?

A. Something similar, the coal is different, but generally they are something similar.

Q. The coal is connected in the two fields, running continually on the outcrop in the two fields?

A. Yes, sir, the Arkansas field is a continuation of the Oklahoma field.

Q. You then were familiar with true conditions of the operation and expense of operating coal mining plants in Arkansas and Oklahoma at the time this letter was written?

A. Yes, sir, I was.

Q. The statements made in that letter expressed the truth, did they not?

A. I had not had time to give the matter any consideration at all, Mr. McDonough.

Q. So far as your information and experience had gone, the statements therein are true, are they not?

A. There are some of the statements therein that are true, undoubtedly, at that time. It was a big question, and I had only a few hours notice of it, and I had not the time to give the matter consideration. In other words, that letter was a mental impossibility for me to have written it, from the time I knew that Mr. Bache intended to go on the non-union operation.

Q. He stated that he had other people interested with him, and he wanted the true conditions to submit to the
3181 other people interested with him in the east?

A. After he had gone all over the matter, as to his plans.

Q. Did you not in my office, a few days ago, state that you did not want to testify in the case, by reason of the fact that you were employing union men, and they might start out at war with you, if you testified in the case?

A. Yes, sir, I said this, that if my letter was not properly interpreted, and explained, that it would put me in a bad light, that it would show I was not in good faith employing union labor; that was the impression I intended to create, but if that letter as testified to on the stand by Mr. Bache did put me in a bad light, and show that I was not in good faith in operating with union labor.

Q. You are operating with union labor now?

A. Yes, sir.

Q. And you were in fear, if you did not go on the stand, that union labor would turn against you?

A. Unless this letter was properly explained, and that it did express Mr. Bache's sentiments at that time.

Q. You did desire an opportunity to explain, so that union labor might understand your position, fearing that union labor might hurt you?

A. I told you that I would not go on the stand and say that letter was written of my own initiative, and if I did go on the stand I would testify that letter was virtually dictated by Mr. Bache, and he requested me to sign it as superintendent of his properties.

3182 Q. Did you not state to me in my office, in the presence of myself and several other men in the office, that you would not tell me that night what your answer would be, that you were making money now and employing union labor, and that you could not afford to antagonize union labor, and would have to give you until the next morning as to what answer you would make?

A. Yes, sir, that is true, but wait a minute.

Q. Did you say that?

A. Yes, sir, but I also had told you that it was three and a half years ago since that letter was written, and I wanted to get the facts fresh in my mind, as near as I could, and that is why I asked you to wait until the next morning, and then I would tell you what I would testify to, and I did.

Q. You read the letter there that night?

A. Yes, sir.

Q. And you had seen it before that?

A. Yes, sir, I had seen a copy of it before that.

Q. Had you had trouble with union conditions in the operation of these mines, after you became superintendent in December, up to the latter part of March this year?

A. We had labor disputes.

Q. Did the union miners go out in violation of their contract during that time?

A. We never lost an hour while I was there.

Mr. Covington: I object to this as not cross-examination.

Mr. McDonough: We withdraw it.

Q. Did you not state in this conversation to which I
3183 called your attention awhile ago, that there were certain statements in that letter that you would never have made if you had realized that it would ever get to the union?

A. And used in the way it was.

Q. You said that?

A. If I thought it would be used in the way it was I certainly would not have written that letter, because it was not my letter, it was dictated to me by Mr. Bache.

Q. You understood that Mr. Bache was to use the letter with eastern men interested in his companies?

A. Yes, sir, but over his own signature.

Q. Do you know Mr. Tom King?

A. Yes, sir, very well.

Q. He is a member of the union, an officer of the union?

A. I think so.

Q. He has been here attending this trial, sitting just behind Mr. Covington there now?

A. Yes, sir, that is the gentleman.

Q. Been here all the time, as far as you know?

A. I don't know.

Q. Did he not come to you before you talked to us and have a conversation with you as to what your evidence would be, and ask you something about that letter?

A. He certainly did not.

Q. Did he send anyone to you?

A Not to my knowledge, I met a party when I came out of

Mr. Bache's office.

3184 Q. Who was that man? A. Mr. Parmlee.

Q. Who is he?

A. A powder man, that sells powder.

Q. Did he come to you as a representative of King?

A. The only thing that Parmlee said was "I saw Tom King across the street a minute ago and he was looking for you."

Q. Did you see Mr. King then?

A. I saw him late that evening.

Q. Did you have a conversation with him about your evidence in this case?

A. No, sir, that was not talked at all. He shook hands with me and asked how I was getting along, and I incidentally remarked about the report of the Bache-Denman case that appeared in the Times-Record for Sunday October 28, and that was all that was said, and Mr. King made no comment on it whatever.

Q. You did not discuss your letter with Mr. King?

A. No, sir, not at that time.

Q. Did you discuss it with any other members of the union? A. Not at that time, no.

Q. At any time since this trial begun?

A. I may have mentioned it, I don't remember, I have talked about it I guess to a great many people.

Q. When did you mention it, and to whom?

A. I talked about it to you, and to Mr. Covington, and to Mr. Reed.

Q. Who?

3185 A. John Reed. And Press Allen,—

Q. Who is John Reed?

A. A coal operator of McAlester.

Q. You didn't understand the question, I am asking you about the officers of the union, since this trial begun, were there any of them discussed with you the question of your evidence in this case?

A. I talked to Mose Cleavenger, in Krebs one evening.

Q. With whom did you talk there?

A. With Mose Cleavenger I said.

Q. He is a member of the union?

A. I understand so.

Q. Was that after this trial commenced? A. Yes, sir.

Q. And before you were called as a witness?

A. Yes, sir, before I was called as a witness.

Q. Before you were here before?

A. No, that was after my conversation with you, Mr. McDonough, and Mr. Hull and Mr. Drinker.

Q. Mr. Cameron, were you some time this spring in the office of the receivers of this case? A. I think so.

Q. And did you not dictate, in the presence of Mr. Hull, the substance of the statement which I ask you to look over. I will ask you to read that, your name appears there.

A. Ask me that question again.

Q. And did you not dictate in the presence of Mr.
3186 Hull, the substance of the statement which I ask you to look over? A. In the presence of Mr. Hull?

Q. Or in the presence of anybody in the office of Mr. Finley, one of the receivers in this case, did you not dictate that statement showing the condition of coal mining in 1913 and 1914, or at the time referred to in the statement?

A. This was dictated to me after suggestions by Mr. Bache.

Q. Mr. Bache?

A. After going over the matter thoroughly with Mr. Bache.

Q. What is your answer to the question?

A. That was partially dictated by me; I don't think all of it was dictated by me, but part of it dictated by me after being in conference with Mr. Bache for a long time.

Q. Were those your views as expressed in that statement?

A. Not all of them, no, sir.

Q. Were the majority of the views expressed therein?

A. I told Mr. Bache that I would testify to my views when I got on the stand, that there were a great many things in there, in fact Mr. Bache told me to write a great many things in there to refresh his memory on certain things, and lots of the thoughts were Mr. Bache's thoughts, that he suggested to me to write in there so that his memory might be refreshed from time to time.

Q. Were the statements dictated by you in this statement true?

A. Some of them I don't know whether they were true or not true.

Q. Referring to all of those that you do know as to whether they were true or not true, where they true, those dictated by you?

3187 A. The written matter that we have up right now is a list of disputes that occurred at the mines of the Bache-Denman Coal Companies in Arkansas, and some of that matter is true, and some I don't know whether [—] is true or not. Some of the ideas in there I don't agree with.

Q. Did you make any false statements in the statement dictated by you?

A. Not to my knowledge. I might differ in judgment as to what is written in there, but some of those views and some of the written matter in there is strictly and purely Mr. Bache's idea, and written entirely at his suggestion."

Mr. Warrum: (Reading)

"Redirect Examination

"By Mr. Covington:

"Q. Mr. Cameron, when they ascertained that Bache dictated this letter, you were discharged?

A. Mr. McDonough told me I could go home on the first train I think that was his language.

Mr. Covington: That is all."

Mr. Lucas: (Reading).

"Recross Examination

By Mr. McDonough:

Q. Mr. Cameron, the statement to which I referred in the cross-examination is Plaintiffs Exhibit No. 219, beginning on page 1008 and down to and including page 1027. That is the statement about which I asked you whether or not you did not dictate it in Mr. Finley's office.

3188 A. Yes, sir, part of it I dictated.

Q. Who wrote it down? Do you know?

A. I don't remember.

Q. In your statement to us on the afternoon when this matter was first called to your attention did you state to us that there was nothing in this matter by way of implication against Mr. Bache? Did you state that to us that night?

A. That there was what?

Q. That there was nothing of any implication of anything wrong against Mr. Bache; did you state that to us on that night, on which you told us you could not tell us what your answer would be until the next morning?

A. I believe Mr. Bache was in good faith in everything he told me.

Mr. McDonough: That is all.

(Witness excused.)"

Mr. Warrum: If the court please, if we might have a recess at this time, we might get our evidence in better shape.

The Court: We may gain time by it. Announce a recess until tomorrow at ten o'clock.

(Whereupon, at 4:15 P. M., after the usual admonition to the jury, an adjournment was taken until Friday, the 27th day of October, [1925], at ten o'clock A. M.)

3189 Friday, October 26th, 1923.

Pursuant to adjournment at 10:00 o'clock A. M. Court reconvened, the parties appearing as before, and the following further proceedings were had and entered of record.

The Court: Proceed with the trial.

Mr. Drinker: If the court please, in pursuance of the understanding between Mr. Warrum and me the other day, it is agreed that there were but two meetings of the International Executive Board of the United Mine Workers of America between April 6th and July 17th, 1914; that those meetings were held, the first, May 4th to 8th at Indianapolis, Indiana, and the second on July 2nd and 3rd at Kansas City and that Board Member James Mullen of District 21 and President John P. White were present at both of those meetings.

Mr. Warrum: That is correct.

The Court: Proceed with the trial.

Mr. Grant: We next offer in evidence the testimony of HARRY BOUSFIELD, given at the former trial, found on page 2787 of the old record.

Direct Examination

By Mr. Covington:

Q. State your name.
A. Harry Bousfield.
Q. Where do you live?
A. At Lansing, Kansas.
Q. What is your business?
A. At the present time do you mean?
3190 Q. Yes.
A. I am working for the state, at a state institution, a penal institution.
Q. In what capacity? A. Sir?
Q. In what capacity?
A. I am one of the officers there at the penitentiary.
Q. Have you ever been a coal miner?

A. Yes, sir, since I was 9 years old, except for the last few years.

[A.] In what states have you dug coal?

A. I have mined coal in Pennsylvania, Ohio, West Virginia, Alabama, Kentucky, Maryland and Kansas, and I might also state that I have mined coal in England.

Q. During these years did you attend any of the conferences held between the miners and operators in which they sought to reach an agreement?

A. Yes, sir.

Q. In what years?

A. I have attended in 1903, 1904 and 1906 of the Southwestern conferences between the operators and miners, and a part of the conference in 1908.

Q. At either of these conferences was there any contract or agreement or understanding between the miners and operators by which the miners were, in consideration of the operators conducting their mines with union labor, to commit acts of violence, lawlessness, and commit murder and
3191 arson, to keep down the production of non-union coal and prevent [from it] coming in competition with coal produced by union mines? A. Not any.

Q. Was there any agreement, contract or [understand] of any kind or character between the miners and operators at either of these conferences by which interstate commerce in non-union coal was to be interfered with at all?

A. None whatever.

Mr. Covington: Take the witness.

Mr. Drinker: No questions.

Witness excused.

3192 Mr. Warrum: All of the witnesses in the court room might be sworn and save swearing them separately.

The Court: All those that know themselves to be witnesses for the defense in this case will stand up and be sworn.

(The witnesses present in the court room were duly sworn.)

Mr. Grant: We next offer in evidence the testimony of W. L. A. JOHNSON, of Kansas City, Missouri, given on the former trial, appearing at page 2673 of the old record.

Direct Examination

By Mr. Covington:

Q. State your name.

A. W. L. A. Johnson.

Q. Where do you live?

A. Kansas City, Missouri.

Q. What is your occupation?

A. General Commissioner for the Southwestern Interstate Coal Operator's Association.

Q. How long have you been acting in that capacity?

A. About five years.

Q. What was your business prior to that time?

A. Prior to that time I had been Commissioner of Labor of the state of Kansas for about 14 years.

Q. Did you have to do with the operation of coal mines, acting in your capacity as Commissioner of the Southwestern Interstate Coal Operators' Association?

A. Yes, sir, to the extent of making and enforcing, as far as our Association rules provided, the contract made
3193 with the United Mine Workers of America.

Q. Mr. Johnson, how many conferences between the miners and operators have you attended, I mean in the Southwest, all over the Southwest; either Missouri, Kansas, Oklahoma, Arkansas or Texas?

A. Two biennial conferences and several supplemental contracts.

Q. Were you at any of the conferences before 1914?

A. No, sir, not the Association conferences.

Q. Were you connected with the making of private contracts.—What I mean by that is, outside of your Association with those that operated their mines with union labor?

A. Yes, sir. In 1899 and 1900 and 1901 and 1902 I was, or participated in the making of contracts between the individual coal operators of Cherokee and Crawford counties, Kansas, with the United Mine Workers of District 14, by merely acting in an advisory capacity; was chairman of their joint scale committee while occupying the position as Commissioner of Labor, and merely in the interest of industrial peace and harmony of the state's industries.

Q. Mr. Johnson, the meetings, at these meetings referred to by you, having for its object the entering into of a contract with the United Mine Workers by the Operators, was there ever any agreement between the Miners and Operators of any kind or character by which the Miners, in consideration of the Operators conducting their mines with union la-

bor, that the Miners would go out and prevent the
3194 transportation of coal in interstate commerce, produced by non-union mines, and keep it off [if] the market in competition with union coal? A. No, sir.

Q. Was there ever any kind of a contract, agreement or understanding, of any character whatsoever, entered into at any of these conferences between the Operators and Miners by which the Miners agreed, in consideration of the Operators conducting their mines with union labor, that they would go out and resort to violence, lawlessness, even to committing murder and arson in order to keep non-union coal off of the mark competition with union coal produced by them?

A. No, sir.

Q. Was there any contract, agreement or understanding of any character between the Operators and Miners in either of the meetings, written, oral, express or implied, by which they were to go out and commit acts of lawlessness and violence [—] the production of non-union coal?

A. No, sir.

Mr. Covington: Take the witness.

Cross-Examination

By Mr. McDonough:

Q. You made contracts with miner's unions, and operated your mines under those contracts?

A. In my official capacity, as General Commissioner for the Association, I have assisted in making the contracts in the 1914, 1916 conferences.

3195 Q. I didn't ask you about that. I am just asking you about the things concerning which Mr. Covington asked you. You testified about making contracts around 1899. You made contracts for the union, and operated under those contracts? A. I didn't operate.

Q. The coal companies operated under them?

A. The coal companies operated under those contracts.

Mr. McDonough: That is all.

Witness excused.

3196 Mr. Grant: We next offer in evidence the testimony of F. W. LUKENS given on the trial of the former case, and found on page 2675 of the old record.

Direct Examination

By Mr. Covington:

Q. Your name is? A. F. W. Lukens.

Q. Where do you live?
A. In Kansas City, Missouri.
Q. How long have you lived in Kansas City?
A. I have lived there a little over four years.
Q. Where did you reside prior to that?
A. I lived for a year in Colorado, and prior to that time in Illinois; five years prior in Illinois.
Q. Now, what is your occupation and business?
A. I am in the coal business, a coal operator.
Q. How long have you been engaged in the conduct and operation of coal mines?
A. Practically 35 years.
Q. Are you now President of what is known as the South-Western Interstate Coal Operators' Association?
A. Yes, sir.
Q. Mr. Lukens, the properties that you have operated during the years since the inauguration of the Coal Operators' Association, the Southwestern Interstate Coal Operators' Association, have they been members om this Association, your companies?
A. Yes, sir, our companies have been members of that Association since I have been in charge of the companies.
3197 Q. Now, have you attended the conferences between the Miners and Operators during this period?
A. Yes, sir.
Q. How many and what years?
A. Well I assisted in making the contracts in 1914 and 1916.
Q. Were you not in a conference prior to that time?
A. Not in the Southwest.
Q. Are you acquainted with Franklin Bache?
A. No sir; I think I have seen him but I am not acquainted with him.
Q. Prior to this convention did you make what they call private agreements with the United Mine Workers to operate your mines, or did you operate them with non-union labor?
A. I have operated mines since 1897 with union labor prior to that time, for about four years with non-union labor. That was before the union was organized in Illinois. When I first went into the business in 1881, the miners in Northern Illinois where I was operating always had more or less of a union. It was nowheres near as strong as it is now.
Q. In any of these agreements, at any time, before or after that, in fact, at any time have you ever entered into any agreement, contracts or understanding [or] any kind or char-

acter with the United Mine Workers, by which the members of that organization were, in consideration of your operating your mines with union labor, to go out and obstruct, hinder and delay transportation of non-union coal in interstate commerce? A. No, sir.

3198 Q. Have you ever had any kind of a contract, agreement or understanding, of any kind or character, with the United Mine Workers, by which they were to resort to violence, lawlessness, including murder and arson in order to keep non-union coal off of the market in competition with union coal? A. No, sir.

Q. Have you ever had any contract, agreement or understanding with them by which they were to resort to all the means, all the lawless means known, [to] order to prevent the production of non-union coal? A. No, sir.

Cross-Examination

By Mr. Drinker:

Q. Mr. Lukens, what companies did you represent when you were back in Illinois, before 1898?

A. Before 1898 I represented first the firm of Lukens & Cavanaugh. That was my first concern, and then the Chicago Verdon Coal Company.

Q. What? A. The Chicago Verdon Coal Company.

Q. And how long did you represent the Chicago Verdon Coal Company?

A. Well, I represented them from 1893 until it was consolidated with the Illinois [Colleries] Company, that was, as I remember in 1905.

Q. 1905? A. Yes, sir.

Q. And then what companies did you represent?

A. I represented the Illinois [Colleries] Company un-

3199 til 1907, and then I quit them and went with the Bulgaria Coal Company, and the Imperial Mining Company, and the Bulgaria Coal Mining Company; representing the Bulgaria interests in Chicago, or their headquarters in Chicago.

Q. Now, in connection with those companies, did you attend any of the joint conferences of the miners and operators in the central competitive field?

A. Yes, sir, I have attended all of them.

Q. From 1897 until nineteen what?

A. 1912 was the last one I was in. I was out of the business for a year after 1912.

Q. Now, you took part in those discussions at those conferences, did you? A. Yes, sir.

Q. Now in connection with those discussions, the operators were continually, were they not, at the miners for not complying with the terms of the 1898 agreement, to protect the operators against the competition of non-union fields? Was that not frequently said in the course of those discussions?

A. There was some talk about the competition from West Virginia.

Q. Were not the operators continually telling the miners, if you want to do business with us, and continue our relations, union relations, you have to unionize West Virginia and the other states that compete with us, that have a lower cost of mining, in order to protect us from that competition? Was that not the continual cry of the operators? A. No, sir.

Q. Did you not hear Mr. Robbins and Mr. Mauer and
3200 Mr. Zerbs, and the rest of those people, making statements of that kind?

A. The statements were not put exactly as you put it.

Q. Tell us how it was put?

A. The miners, as you probably know, are always asking for more money, asking for an advance, and we used as an argument why they could not have that, the competition from these other states, from these non-union states, and told them in a good many instances that we could not afford to pay the advance in price, owing to the competition from these non-union states. That in effect was what was said. Now, there would be a good many variations of that, in all probability.

Q. You remember the eighth clause of the Chicago Agreement don't you? A. No, I don't.

Q. I will refresh your mind then. You don't mean that you never heard that 1898 agreement discussed, as imposing on the miners an obligation to bring up the cost of non-union fields?

A. I remember that the Operators, especially the Eastern operators, had more or less to say about the competition from West Virginia, and I think, that is as I remember it now, that was a good while ago, the miners had said that they were going to organize West Virginia, and get them into the fold. Now, I don't remember the exact language of the agreement, nor do I remember the exact language of the discussion that took place, but in effect I have told you what it was, as I remember it.

Q. Don't you remember that the miners were told that they had agreed to do that in the Chicago Agreement, and

later in the Pittsburgh Agreement, and later in Indi-
3201 anapolis, and that they were saying that, we are doing the best we can, and we would do better if you would help us; don't you remember that discussion from 1898 straight ahead in every single convention?

A. Well, I remember there was more or less talk about West Virginia, especially from some of the Eastern operators.

Q. Don't you remember that there was talk of the kind that I just summarized, in all those conventions?

A. I remember there was a lot of complaint of the competition from that field.

Q. Now, look at the eighth clause of the Chicago Agreement, and see if you remember it any more? Don't you remember hearing that clause discussed?

A. Yes, sir, I have heard this discussion of the non-union field a good many times.

Q. Don't you remember hearing the operators all the time saying to the miners, you agreed in the Chicago Agreement to bring West Virginia up to our cost, and we cannot live and pay the wages you ask us, and give you conditions you ask us, unless you comply with that agreement, and the miners saying we are doing the best we can to comply with that agreement, and we could do better if you would help us? Don't you remember that discussion now?

A. I think I have heard the miners make some sort of an answer like that; I am not sure as to the exact language.

Q. You remember that that was the general substance of it. Don't you?

A. But I don't remember that the operators ever offered to help them. They threw the burden onto the miners
3202 to protect them from the competition.

Q. Don't you remember that the operators told the miners that, you agreed to do this when [he] gave you the eight hour day and the check off, and you agreed to bring West Virginia up, and you have not done it, and it is not fair to ask us to go on with our part of the agreement until you comply with yours, and you have not done it. Don't you remember that was said every year?

A. The complaint was against the competition in West Virginia, and the miners were continually asking for more money, and the Eastern operators especially were objecting to paying more as long as they had that low price of competition.

Q. But do you or do you not remember that the operators told the miners, you agreed to bring up West Virginia to our cost, when we gave you the eight hour day and the checkoff

and the union conditions, and unless you comply with your part of the agreement, we cannot be expected to go on and comply with ours, and give you these higher wages and these conditions. Don't you remember that discussion straight along through every conference?

A. I think you are mistaken about that.

Q. I will show you (showing witness exhibit No. 200), in the 1898 conference, over here on page twenty-five, just read what Mr. Zerbe said there, and see if that refreshes your recollection?

(Witness examines exhibit handed him.)

A. This statement here you speak of is by Mr. Robbins but not by Mr. Zerbe.

3203 Q. He was an operator, was he not?

A. Yes, he was a Pennsylvania operator.

Q. That is Zerbe, J. Zerbe, an Ohio operator?

A. Yes, he made that statement.

Q. Did you read that statement over and see if it refreshes your memory?

A. Well, this statement brings out, or states what I stated before. The miners were asking for more money. Mr. Zerbe was objecting decidedly to paying more (money) until the constitution was put on a fair basis.

Q. Yes, sir, but that is not what I asked you, Mr. Lukins. I asked you whether, after you read that over, you do not remember that the operators were not only doing what you say, but were charging the miners continuously with having agreed in the Chicago agreement to bring up the cost of non-competing states and the operators were saying "We cannot go on without our side of the agreement and give you union conditions unless you comply with your side of the agreement and bring up West Virginia and the non-union states?" Didn't that take place?

A. Not the way you put it. There was considerable complaint by the eastern operators over the competition from West Virginia and as stated here, which is the official record, and this will speak for itself, and I take it you have read it into the record, so you know what it is,—but the eastern operators were complaining in these meetings and objecting to paying a higher rate of wages and complaining of the competition from West Virginia.

Q. Don't you remember that the operators told the miners that they had agreed to do it in the Chicago Agreement? Doesnt' that quotation I have shown you say that?

3204 A. Yes, I think the operators did say that, that the miners were going to organize West Virginia.

Q. That they had agreed to do it in the Chicago Agreement, didn't they say that? A. I am not sure.

Q. Didn't Mr. Zerbe say that in that statement I showed you? Look at it again if you want to.

A. Mr. Zerbe sometimes said things that were not really justified.

Q. That is not what I asked you Mr. Lukins, but I asked you whether the operators did not continually say that, not whether they were justified or not. I don't want to know what you think, but what these people said in this conference. Didn't Mr. Zerbe and the other operators continually say to the miners, "You agreed in the Chicago Agreement to bring up the cost of the non-union field that are competing with us to our cost and if you do not comply with your side of the agreement you cannot expect us to comply with our side of the agreement and continue the union agreement". Wasn't that said continually by the operators?

A. No, sir, it was not.

Q. Didn't Mr. Zerbe say that in substance in that statement that I showed you? A. No.

Q. What did he say?

A. He objected to paying more money.

Q. That book shows the official record of what was said in this conference, does it not?

3205 A. Yes.

Q. May I ask you to look at the statement of Mr. Green of Ohio in the 1910 conference. In the first place who was Mr. Green of Ohio? A. There was a William Green.

Q. I will ask you to look at that statement and see if that reminds you of what was said there (handing witness exhibit 30 E, page 30)?

A. What is the question now?

Q. After reading that, do you remember whether the miners did not continually say to the operators that they had complied with the provisions of the contract in the Chicago Agreement, continuously to the best of their ability in connection with the unionization of non-union fields?

A. That statement there refers exclusively to West Virginia.

Q. Well, to West Virginia.

A. He states there that they had honestly tried to organize West Virginia but had failed to do so and he also stated if the operators had helped them they could have organized the state.

Q. You are now operating union mines, are you, Mr. Lukins? A. Yes.

Q. And as President of the Southwestern Coal Operators Association you deal with the union officials continuously in connection with making contracts and other matters of that kind? A. Yes, sir.

Q. You have constant relations with the union and with the union officials?

3206 A. We have relations with them, first, in making the contract and secondly in trying to carry out the provisions of the contract.

Mr. Drinker: Thank you, that is all.

Redirect Examination

By Mr. Covington:

Q. Mr. Lukins, with reference to the West Virginia matter, that was a matter of debate, I believe you say, and a question of each side making a speech setting forth its ideas, in which speeches they included everything, they covered a wide field.

A. Yes, as I stated the miners would come in and demand an increase, and the operators would object to it and point to non-union competition they had from West Virginia. That was confined almost exclusively to Ohio and Pennsylvania where that competition hurt them.

Q. And in the same conferences Mr. Morrow and Mr. Jones and those fellows operating union mines in Ohio and non-union mines in West Virginia and they were howling about the non-union mines in West Virginia? A. Yes.

Mr. Covington: That is all.

(Witness excused)

3207 MINNIE B. POEHLER, called as a witness on behalf of defendants being first duly sworn testified as follows:

Direct Examination

By Mr. Warrum:

Q. State your name? A. Minnie B. Poehler.

Q. Where do you live? A. Indianapolis, Indiana.

Q. Do you hold any position in the office of the Secretary-Treasurer of the United Mine Workers?

A. Assistant to the Secretary-Treasurer.

Q. You have the gentral custody of the financial records of that office? A. I do.

Q. That is, you have access to them? A. I do.

Q. I will ask you if you have made, on request by Mr. Houck, an examination of the financial records of the International Association for 1914? A. I have.

Q. With reference to seeing whether or not any money had been paid to Thomas King during that year?

A. Yes, sir.

Q. Was there any money paid by the International Organization to Thomas King that year, as shown by those records?

A. No, sir.

Mr. Warrum: That is all.

3208 Mr. Drinker: No questions.

The Court: Stand down.

RUFUS M. HAMILTON, called as a witness on behalf of defendants being first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. State your name please?

A. Rufus M. Hamilton.

Q. Where do you live? A. At Hartford.

Q. Where did you live in 1914?

A. At Hartford.

Q. What was your business then?

A. I was in the drug business.

Q. Are you still in the drug business? A. Yes, sir.

Q. How long had you been in the drug business in 1914 at Hartford?

A. I had been,—let's see, since 1903.

Q. Do you remember the occasion of a meeting at the school house at Prairie Creek on April 6th, 1914?

A. Yes, sir.

Q. Did you attend that meeting?

A. Yes, sir.

Q. At whose solicitation, if anyone, did you attend that meeting?

A. The best I remember now, some one or two men came around and told me they were going to have a meeting out there that day and asked me if I would like to go out.

3209 Q. Were they miners or business men?

A. I would rather think they were miners, I am not sure right now who they were; I don't remember.

Q. Did you attend? A. Yes, sir.

Q. Were other business men there? A. Yes, sir

Q. Were they business men in general from Hartford,—state briefly?

A. I don't know that I can name them all, I can name a few of them.

Q. Were there any Doctors there? A. Yes, sir.

Q. Any dry goods merchants there? A. Yes, sir.

Q. Any bankers there? A. Yes, sir.

Q. Did you see any farmers there? A. Yes, sir.

Q. You saw those business men there,—how many people were there altogether?

A. I would estimate the crowd at somewhere around 1,500.

Q. What time did you get out there?

A. Oh, it was somewhere, I presume about 10:00 or 11:00 o'clock in the morning.

Q. Did you hear the speeches made at the school house?

A. Yes, sir.

3210 Q. Did you speak yourself? A. Yes, sir.

Q. Were there any speeches made at the school house advocating violence? A. No, sir.

Q. What was the nature of the speeches made there?

A. The nature of the speeches principally that I recall right now, we were just discussing the situation that had arisen so suddenly that we felt like we people who were in a position to do so, should try to see that the situation was kept in control and no hot headed decision be made, or any violence permitted. On my part, I know I felt like, after being called in that day, it was my duty to try to see that there was no violence permitted, and in the talk I made I advocated that.

Q. That was a union rally, was it,—union district?

A. Yes, sir.

Q. Were various trades organized? A. Yes, sir.

Q. And the barbers? A. Yes, sir.

Q. And the carpenters? A. Yes, sir.

Q. And the Farmers Union in that vicinity?

A. I don't know whether there was a farmers union at that time, there was one later perhaps.

3211 Q. Now, did you hear what had happened previous to the meeting around Prairie Creek with reference to Mr. Bache's operation, and the severance of his relations with the union contract?

A. I had heard some talk to that effect, yes, sir.

Q. Was this meeting in the natuer of a protest against the situation? A. Yes, sir.

Q. Did you see the crowd as it surged over the ropes?

A. No, sir, I was not right close up to where the ropes were, I was back some three or four hundred feet. However,

I saw the crowd, they were down at the ropes, up to the ropes and what happened around the ropes I don't know.

Q. You noticed business men from Huntington there?

A. Yes, sir.

Q. And from Midland? A. Yes, sir.

Q. There was a band was there not from Huntington?

A. Yes, sir, there was one there, I am not sure whether it was from Huntington or Midland.

Q. There was a committee appointed at the school house to go over and call on the superintendent of the mining company, was there? A. Yes, sir.

Q. Did you go over with that committee?

A. No, sir, I didn't go with the committee, I went later.

Q. Now, following the meeting at the school house of April 6th, there was a battle occurred on July 17th. Now, between April 6th and July 17th, did you hear any rumors,
3212 public rumors in that neighborhood and in Hartford, regarding the attitude or conduct of the guards?

A. Yes, sir.

Q. What were those rumors?

A. Well, the rumors in a general way were that the guards out there were misconducting themselves and were shooting and drinking. Of course there was lots of booze in that country down there at that time, and the rumors in general were that themen were getting a little bit too much booze, and shooting their guns off and scaring a lot of women and children out there. Rumors of that character were floating around there continuously, from April 6th to July 17th.

Q. Did you hear these rumors from business men out there, or miners?

A. The rumors were general around Hartford.

Q. Do you remember the occasion when it was reported that Frogtown was shot up? A. Yes, sir.

Q. How long was that before the battle of July 17th?

A. I don't recall the exact date, I judge it was probably a week or ten days previous.

Q. Do you know whether or not the people came in from Frogtown to Hartford?

A. No, sir, I don't know that personally.

Q. You didn't see any of them? A. No, sir.

Q. Was there among these rumors, was there talk that
3213 there was drinking at the camp? A. Yes, sir.

Q. And insulting women? A. Yes, sir.

Mr. Warrum: That is all.

Cross-Examination

By Mr. Drinker:

Q. You say you were a druggist in Hartford?

A. Yes, sir.

Q. Still there? A. Yes, sir.

Q. Now, do you know Jim McNamara? A. Yes, sir.

Q. Was he one of the men that came and asked you to come out to the parade?

A. I cannot tell you who it was.

Q. You don't know but what he was the one?

A. I can't tell you; it might possibly have been him.

Q. He was pretty active around there at that time?

A. I don't know that he was so active at the April 6th meeting as later.

Q. He was very active later? A. Yes, sir.

Q. Now, he made a speech on April 6th, did he open the meeting?

A. I couldn't say about that, I don't remember. Miss Hogan is the only other person that I recall as having made a speech, but I think others did.

3214 Q. Did several people make speeches besides you and Miss Hogan?

A. She is the only one that I can recall positively right now, but I think there was another talk or two made.

Q. Did someone introduce you as a speaker?

A. No, sir, someone called on me in the crowd; I didn't go out there for the purpose of making a speech, but having been raised in that community and they seeing me in the crowd, they called on me.

Q. Did anybody suggest to you to talk about peace and quiet and passiveness, and that sort of thing before the meeting? A. No, sir.

Q. You did that yourself? A. Yes, sir.

Q. But all the speeches that were made told all the men not to do anything rough?

A. The general outline of the speeches were that there was no violence advocated.

Q. Did they not make a point of saying there should not be any violence?

A. I don't recall that there was any special point made on that.

Q. You said that did you? A. Yes, sir.

Q. Did you tell them not to do anything rough?

A. Yes, sir, I told them myself.

Q. Why did you think it was necessary to do that?

A. Having been reared in a country like that and remembering the strike of 1899, I realized that a condition might arise.

3215 Q. What did you think would happen if the non-union men did not come out right away, at the request of this committee?

A. I didn't even suspicion there would be any fights of that kind on that day when I left.

Q. Why did you tell them to be quiet and not do anything?

A. After getting there and seeing the crowd was so much larger than I expected, I felt like, in a crowd of that size you might find a few hot headed men.

Q. You thought if the men did not come out there would probably be trouble?

A. No, sir, I really did not think that, I thought that the object of the committee, as I recall, going down to the school house, was to talk thee matter over with the men, and I tried to show them that it was no o heir inerest to come into a community and try to break a contract that the miners had with the operators. That was the object.

Q. That is what you thought? A. Yes, sir.

Q. Now, after the speeches were over, did the chairman of the meeting say that everybody was to wait at the Union Hall until the committee got back?

A. Well, I couldn't tell you about that.

Q. Why did you stay there and not go on down with the crowd?

A. I went on down but the crowd kind of divided up, drifted down gradually, there was a considerable portion of the crowd that did not go in a bunch down there.

Q. Most of the speakers and women and children
3216 stayed up at the Union Hall, at the school house?

A. They did for a while, but after a while the entire crowd got down there.

Q. Now, did you ever see any company men, any of the Bache-Denman men, the guards, [doing] outside of the property when you were there? A. No, sir.

Q. You never saw them outside of the plant?

A. No, sir.

Q. You never saw them in Hartford?

A. No, sir, not to know them; I didn't know who was working out there.

Q. Not that you remember. You heard rumors that guards were coming to Hartford to shoot up the town?

A. Yes, sir.

Q. You remember when they threw out guards that night, before the battle, to protect Hartford against the guards?

A. Yes, sir.

Q. Were you afraid that the guards were coming to shoot your store up,—honest, injun, now?

A. My store was pretty well protected that night.

Q. Now, honest injun, were you afraid that any guards would come out to harm Hartford or anybody in Hartford there on the night that Hartford was protected, or any other night?

A. I felt a certain uneasiness about the situation, because I was living in the rear of my store and seldom got out of it.

except to go to the post office, and I didn't know what
3217 was happening outside.

Q. How many company men did you understand were at the Bache-Denman property.

A. I don't know, I could not tell you because there were certain rumors afloat, some that there were few men working and at other times forty or fifty men out there, and I have no idea how many they had there during this period.

Q. Hartford was 100 per cent. union, was it?

A. Practically.

Q. And is now? A. Yes, sir.

Q. All the business men are entirely dependent upon the union people for their trade?

A. To a large extent, yes, sir; of course the farming interests there, and some other interests there.

Q. The farmers are practically all miners, once in a while?

A. We have got a little farming interest that we get trade from.

Q. Right in Hartford?

A. No, not right in town, but surrounding there.

Mr. Drinker: That is all.

The Court: Step down.

(Witness excused).

CLARENCE GEAN, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. State your name please?

3218 A. Clarence Gean.

Q. Where do you live now?

A. In Hartford.

Q. Where did you live in 1914?

A. Hartford.
Q. What business were you in in 1914?
A. Dry goods, clothing and shoes.
Q. Do you remember the occasion of a meeting at Prairie Creek school house, April 6th, 1914?
A. Yes, sir.
Q. Did you attend? A. Yes, sir.
Q. At whose solicitation or urgency did you go?
A. I don't remember that. It seems like there was a general understanding that they would close and go down, and I don't remember exactly who said anything to me about it.
Q. Was there any meeting of miners,—any committee, or any miner that called on you and demanded that you go?
A. There were no demands made.
Q. What time did you go out there?
A. It must have been about noon, or something like that.
Q. Was there anything to eat out there, did anybody take their meals out there?
A. I don't know about that, I did not.
Q. Was there a delegation from other cities?
A. Yes, sir.
Q. How many people altogether were there?
3219 A. I would judge 1,500 to 2000, something like that.
Q. About all the public generally?
A. Yes, sir.
Q. Farmers and bankers and merchants and business men? A. Yes, sir.
Q. Did you attend the meeting in the school house proper?
A. I was not in the school house, no, sir.
Q. Did you hear any of the speeches made?
A. Yes, sir.
Q. Standing near the school house?
A. They were on the steps.
Q. Did you speak?
A. No, sir.
Q. Did any of these speeches advocate violence, or anything of that sort?
A. Quite the opposite.
Q. Do you know whether or not it was understood there before the meeting or at the meeting that Mr. Bache had severed his relations with the union miners at Prairie Creek No. 4, and that that was the subject of discussion?
A. That was the subject of discussion.
Q. Was there a protest among the public generally against that or not?
A. Yes, sir, the public did not like the idea.

Q. Did you see men from Huntington there?
A. Yes, sir.
Q. A band came from Huntington?
3220 A. Yes, sir.
Q. And people came from Midland?
A. Yes, sir.
Q. Now, after April 6th, and the period intervening before the battle of July 17th, do you know of that battle having taken place? A. Yes, sir.
Q. Now, I will ask you to state whether or not there were in Hartford rumors as to the conduct of guards, and state what those rumors were?
A. The rumors were current there that the guards were insulting women and children, and shooting up the country out there, and there was lots of booze, and such conduct as that.
Q. And was there excitement more or less in town?
A. Yes, sir, there was some excitement.
Q. Do you remember the occasion when it was said that Frogtown was shot up? A. Yes, sir.
Q. Did you see any of the people that came in from Frogtown?
A. I don't know whether I did or not, it was just rumored. I don't remember whether I saw them or not.
Q. You don't know how long that was before the battle of July, 17th?
A. Not very long.
Q. At that time how was this excitement or feeling that you speak of, was it at fever heat, intense, or not?
A. Yes, sir, I guess it was.

3221 Cross-Examination

By Mr. Drinker:
Q. Did you know Jim McNamara?
A. Yes, sir.
Q. Was he one of the ones that asked you to come out to the meeting? A. I don't think he was.
Q. You don't think he was?
A. No, sir.
Q. Are you sure he was not?
A. I would not be sure who came, or whether anyone did or not.
Q. Some union miner asked you?
A. I don't remember whether they did or not, I don't remember that part of it; it was a general discussion.

Q. Everybody was going and so you went?
A. I guess that is about it.
Q. Practically every store was closed and they all went but Jess Edwards?
A. I don't rememebr whether anyone stayed at home or not; it seems like everybody was there.
Q. The whole attitude of the community was that the non-union operation should not be allowed to ship any coal, was that right?
A. I didn't hear anything like that.
Q. You didn't hear anything like that?
A. No, sir.

3222 Q. Now, tell me this about these rumors of the guards coming out and shooting up Frogtown and Hartford and other things, did you believe that those rumors resulted from the fact that that happened, or did you believe that miners spread them around for an excuse to get things started up,—now look me right in the eye and answer that question.

Mr. Warrum: I object to the interrogation of any witness in that fashion. It is not proper.

Q. Answer the question please?
A. State the question again.

Mr. Warrum: I renew the objection unless the last part is withdrawn.

Mr. Drinker: I will withdraw the part about looking me in the eye.

A. What part of the question do you want answered.
Q. I want to know whether you, in the bottom of your heart, believed that these rumors about the shooting up of Frogtown and the guards insulting women and so forth, resulted from the fact that those things really happened or that the union men spread them around to justify some things they were going to do with the Bache-Denman people?
A. I do not believe the miners spread that around.
Q. And you did not believe that at the time?
A. I did not.

(Witness excused.)

DR. B. W. HOWARD, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

3223 Direct Examination

By Mr. Warrum:

Q. State your name please?

A. B. W. Howard.

Q. Are you a physician?

A. Yes, sir.

Q. Where do you live? A. Midland.

Q. Where did you live in 1914? A. At Midland.

Q. Do you remember the occasion of a meeting at the Prairie Creek school house on April 6th, 1914?

A. Yes, sir.

Q. Were you there?

A. Yes, sir, just for a short time.

Q. You were there a short time?

A. Yes, sir, a short time.

Q. Were there other people from Midland attending?

A. Yes, sir.

Q. What was the character of that meeting,—composed, the assembly was it, of all different kinds of business?

A. It was a mass meeting that everybody was invited that wanted to go.

Q. Women and children there?

A. I cannot recall seeing any children, I just drove up the road or rode up, whichever way I was traveling and I had a call about a mile and half above there, and I im-

3224 mediately went on the call, and when I came back they said it was broken up.

Q. Did you hear any speeches made on that occasion?

A. No, sir.

Q. Do you know whether or not, or did you know at the time whether or not this meeting was a protest against Mr. Bache's disruption of his relations with the union miners?

A. That was my understanding.

Mr. Warrum: You may examine.

Mr. Drinker: No questions.

(Witness excused.)

3225 Joe Claiborne, of lawful age, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. What is your name?

A. Joe Claiborne.

Q. What is your business?

A. Farming.

Q. Where are you living?

A. I am living about 5½ miles east and south of Hartford.

Q. Where were you living in 1914?

A. The same place.

Q. Did you attend a meeting at Prairie Creek school house on April 6th, 1914?

A. I suppose so. It was a mass meeting. I don't remember any dates.

Q. It was in April?

A. Yes, sir.

Q. Along in the spring, in April?

A. Yes, sir.

Q. What was the character of that meeting, with reference to the public generally that was represented? Were there business men there?

A. The best I understood it was a general mass meeting over there for the purpose of getting things sort of quieted down. It seemed like there was a disturbance there, and there was a mass meeting for that purpose.

3226 Q. Was that mass meeting to take some action, and did it appoint a committee to call on the superintendent of the mine at No. 4?

A. Yes, sir, they either appointed or elected—I think appointed, though—a committee to go down and see the boss or manager of the mine for some kind of a settlement.

Q. Did you hear the speeches made at that school house?

A. I heard them, but not distinctly. There was such a crowd, and I was back in the rear, and I couldn't hear all that was said. I heard two or three of them make some talks.

Q. Did you follow the committee down to the office?

A. No, sir.

Q. Did you go with the crowd down to the ropes?

A. No, sir.

Q. You saw nothing that occurred?

A. No, sir.

Q. Did you see people from Midland and Huntington at that meeting?

A. Yes, sir.

Q. And there was a band there?

A. I don't remember that.

Q. You don't remember about the band?
A. No, sir.
Q. Do you know whether or not they had anything to eat there? A. I don't remember.

Mr. Warrum: That is all.

3227 Cross-Examination

By Mr. Drinker:
Q. When you saw this crowd did you think that was a good way to get things quieted down, to bring a number of people out there so near to that open shop mine?
A. Yes, sir, it had a tendency, or would have a tendency upon what I call the moral people in the bunch, to sort of make them consider the thing.
Q. What do you mean by the moral people?
A. I would like to make a statement how come me present at that meeting.
Q. Go ahead. I would like to hear it, sir.
A. I lived about four miles and a half or five miles east and south of Hartford. Hartford is my trading point. I had a sick child and went to Hartford for some medicine, chill tonic or something, and when I got there there was quite a stir in town, and one of the draymen driving a big team said, "Get in the wagon and go with me over to the mass meeting." I said, "What is the mass meeting?" He said, "Everybody is meeting over there, mine workers, farmers union and everybody." Well, I was a member of the farmers union, and I went over there and stayed till about 1:30, I guess, or 2:00 o'clock.
Q. When you saw all those miners and everybody there, what did you suppose would happen if the non-union men, what they called the scabs, didn't come out? Did you think there might be trouble?

3228 A. No, sir, I didn't hardly think there would be trouble. The way I looked at it, it was, as the fellow says, acting on a business proposition there.

Q. It was a business proposition to have 1500 people come out to persuade 40 or 50? Is that what you call a business proposition?
A. I don't know whether there was 40 or 50 or a thousand in that bull pen. I never went in there.
Q. You think there may have been a thousand in there?
A. There is no way of telling.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness excused.)

W. H. HALL, of lawful age, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. What is your name? A. W. H. Hall.
Q. Where do you live? A. Hartford.
Q. What is your business? A. Groceries.
Q. Did you live in Hartford in 1914?
A. Yes, sir.
Q. What was your business then?
A. Groceries.
Q. Do you remember the occasion of the meeting in Prairie Creek school house on April 6th, 1914?
3229 A. Yes, sir.
Q. Did you go out there?
A. I went late in the afternoon, and got there about the time the crowd was dispersing.
Q. How did you go out?
A. I went out in a hack.
Q. Your own? A. Yes, sir.
Q. Did anybody go with you?
A. It seems like there was one or two, or two or three.
Q. Were you solicited by the miners to go out there, or did you go out for any other reason?
A. I don't think so. I didn't close until somewheres around two o'clock, I don't think.
Q. Do you recall hearing any of the speeches that were made? A. I wasn't there at that time.
Q. You were not there at that time?
A. No, sir.
Q. What kind of a crowd was that, with reference to its constituent members, in relation to being representative of the neighborhood generally?
A. It was a general crowd of all classes of people, all working organizations and such as that.
Q. Were you there when the committee was appointed?
A. No, sir.
Q. Did you go across with the crowd and the committee?
A. I got there just as the committee was going down
3230 to the mine, and went part of the way down there, and we finally got to the ropes.

Q. Did you see the altercation between the guards and the crowd? A. No, sir, I don't think I did.

Q. Do you remember late in July when it was reported that Frogtown was shot up?

A. Yes, sir.

Q. Did you see any of the people that came up from Frogtown?

A. There was some ladies, I think they were Italians, some foreigners, came in my store and was talking about it.

Q. Do you remember seeing any of the people that came over?

A. Nothing only just talk of the shooting after it took place.

Q. Did you ever see Pete Nichols? Do you remember the incident of Pete Nichols wheeling his crippled grandchild over there? A. I heard talk of it.

Q. You didn't see it?

A. There was three or four Italian women that come in my store and was talking about it.

Q. You didn't see any of these people the next day or that night?

A. That was the next day. That night they came in, and the next morning they was in my store.

Q. Had you heard anything previous to that, or after that, before the battle, any rumors or talk as to the conduct of the guards at No. 4 mine?

A. Yes, sir.

Q. What was the character of those rumors?

A. The reports was they were insulting women and
3231 shooting up Frogtown.

Q. Were those rumors just circulated by the miners, or were they public rumors generally?

A. No, sir, they were public rumors.

Mr. Warrum: That is all.

Cross-Examination

By Mr. Drinker:

Q. Mr. Hall, when Jim McNamara and these people were indicted by the government for that business, you went on one of their bonds, didn't you? You signed one of the bonds for them? A. Yes, sir, I believe I did.

Q. What?

A. I don't know whether I did or not. I am not sure.

Q. Don't you remember you were one of the men that made a bond for them so they could get out on bail? Think it over? A. I don't remember.

Q. What is your best recollection? Don't you think you were one of them?
A. Yes, sir, I believe I did.
Q. Did Pete Stewart give you a bond to indemnify you at that time, so that you would not be stuck in case they skipped their bail?
A. I don't know, but I think he told us he would be willing to do it.
Q. He fixed it so you would not lose anything?
A. I think it was generally understood something like that.
Q. That is all right. Didn't you see anybody wheeling their crippled grandmother over the rough road from
3232 Frogtown to Hartford that night?
A. No, sir.
Q. In a wheel chair?
A. I don't remember.
Q. You don't remember it? A. No, sir.
Q. You missed that, did you, as it happened?
A. I guess I did. I don't remember.
Q. I can't hear you.
[Q.] I don't remember now.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness excused.)

CHARLES MCGOWN, of lawful age, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. What is your name?
A. Charles McGown.
Q. What is your business?
A. At present I am working in the mine, laying track.
Q. Whereabouts?
A. For the Jim Clark Coal Company.
Q. What was your business in 1914?
A. Blacksmithing.
Q. Where did you live?
A. Two miles and a half west of Mansfield.
3233 Q. Were you employed at the Bache-Denman mines before they shut down?
A. Yes, sir.
Q. What were you doing there?

A. Blacksmithing.
Q. After they shut down did you continue to work?
A. No, sir.
Q. Did you go back after your tools, or did the tools belong to you?
A. Part of the tools did. I went back to get them.
Q. Did you have any trouble getting the tools?
A. No, sir. I just asked permission to go in and get my tools.
Q. Did anyone go with you when you got them?
A. Yes, sir, two guards went with me.
Q. Did they have guns?
A. Yes, sir.
Q. They accompanied you to where the tools were?
A. Yes, sir.
Q. And you got them and went out?
A. Yes, sir.
Q. Were you at the meeting at the school house on April 6th, 1914? A. Yes, sir.
Q. How many people were there? A. About 1500.
Q. From what parts or points?
A. All over the country.
Q. Were there women there?
3234 A. Yes, sir.
Q. Did they come in buggies?
A. Yes, sir.
Q. On horseback?
A. Yes, sir.
Q. On foot?
A. Yes, sir, every way they could get there.
Q. What was the character of the crowd with reference to being representative of the community?
A. I don't understand.
Q. Were there all classes of people there, or was it a miners meeting? A. Yes, sir, all classes.
Q. Did you hear any of the speeches made?
A. Yes, sir.
Q. What did the speakers say, in substance?
A. Well, I couldn't tell you exactly what. Mr. Hamilton made a talk, and Miss Freda Hogan made a talk. I was quite a ways back from the school house. They stood in the school house door and talked, and I was quite a ways back.
Q. Did you hear any talk of violence?
A. No, sir. Everybody seemed to be in a good humor.
Q. Was one of the subjects discussed there the severance by Mr. Bache of contractual relations with the union miners?

A. Yes, sir.

Q. As a result of the speeches, or of the meeting, was there a committee appointed?

3235 A. Yes, sir, there was a committee appointed to go down and wait upon the superintendent Cameron.

Q. Do you know whether or not that committee went to the office and saw Mr. Cameron?

A. They was there when we went down there.

Q. Did the crowd follow them down, or shortly afterwards, down to the ropes?

A. When the committee went, the committee said, "You people all stay back here." They went on down, and then somebody come up and says, "All right." He said, "Come on and go down." And Mr. Cameron—or Mr.—I can't think of his name now, an old gentleman there. Bates—no, not Bates—Patterson. I saw Mr. Patterson and Mr. Cameron, Buster Howard and Jim Slankard was talking on the porch when we got down pretty close to the ropes.

Q. Now, if you were there and saw it, tell what were the circumstances or events that led up to that altercation between the guards and the crowd?

A. I guess I was as far as from here to the back of the house from the ropes. The crowd was in front of me a right smart. There was a guard come up there by the name of Barnes, if I am not mistaken, and was telling the people to "get back from the ropes. Get back from the ropes. Don't break them ropes down." Somebody in front of me said, "I cant' back. The crowd is shoving me".

Q. (By Mr. Drinker) I didn't hear that.

A. Somebody said, "The crowd is shoving me."

3236 Some woman spoke up and said, "You guarded scabs in Colorado." "Yes, and by God, I will guard them here"; and somebody batted him with something. I got up on a stump during this time, before somebody hit him, and there was a lady by the name of Miss Robinson, or Miss Rankin, standing right by me, and one or the other of them shoved me off the stump. The stump was about this high (indicating). One of the women got up on the stump to talk to him.

Q. Are you a member of the miners' union?

A. Yes, sir.

Q. What mine are you working in now?

A. The Jim Clark Coal Company.

Mr. Warrum: That is all.

Cross-Examination

By Mr. Drinker:

Q. Mr. McGown, where were you the night before this parade? What place were you living in?

A. The same place I am now.

Q. Where is that?

A. About two miles and a half west of Mansfield.

Q. The night before that somebody telephoned you from Hartford?

A. I don't know whether the telephone come from Hartford or not. I am not connected up with the Hartford line. I am connected with the Mansfield line. I don't know whether it come through Hartford or not.

Q. Who did they ask for? Did they ask for you, or did they ask for a union miner?

A. To come to the telephone?

3237 Q. Yes. A. My best recollection—

Q. It is a long time ago, I know.

A. I know it. The phone rang, and somebody went to the phone, some of my children, and said, "Dad, somebody wants you on the phone."

Q. Then they asked you to telephone over to Huntington and get everybody to come to the meeting? A. No, sir.

Q. What did they ask you to do?

A. They asked me to go over there and tell the boys.

Q. They asked you to go over to Huntington and tell the boys?

A. Tell everybody there was a mass meeting at the school house, and to come over.

Q. Now, after these speeches you told about, Jim McNamara made a speech, didn't he?

A. I don't know whether he did or not. I don't remember.

Q. He was there, wasn't he?

A. I saw Jim one time. I am just slightly acquainted with him.

Q. Wasn't he chairman? Didn't he open the meeting?

A. No, I don't think he did.

Q. You don't think he did? A. I am not positive.

Q. You don't remember. A. No, sir.

Q. After the committee went down to the mine, and you stayed back at the school house, then you say somebody

3238 came up and said, "Come on down"? A. Yes, sir.

Q. Didn't they say, "Come on down, they have quit"?

A. No, sir.

Q. "They are going to come out"? A. No, sir.

Q. Why did they want the crowd to come down?
A. I don't know. I couldn't tell you.
Q. Somebody did notify the crowd to come on down?
A. Yes, sir, somebody just come up and said, "Well, come on down."
Q. Didn't they say, "Come on down. The scabs are going to stop work?" A. No, sir.
Q. Didn't you know they had given up?
A. No, sir, I didn't.
Q. When did you find that out?
A. Not until we got down there.
Q. Then you found out they had surrendered?
A. No, sir, I never heard they had surrendered. There wasn't no surrendering to do that I know of.
Q. When did you hear that the non-union men were going to stop work there?
A. When we got down there and the crowd got up there into that confusion with the guards, and these fellows got silent, Jim Slankard got up on a scaffold that the company had built by the side of the scales, where they throw coal on when the cars are too heavy, when they overload the cars
3239 they throw the coal over on that platform, and when they have one too light they put some on it. Jim got up and waved a handkerchief and said, "Boys, the thing is all over. Everybody go home." And the band played Dixie.
Q. You were up on a stump, and some lady wanted to get on the stump? A. Yes, sir.
Q. And she pushed you off?
A. She pushed me off. That was either Miss Robinson or Miss Rankin, and I don't know which one it was.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness Excused.)

Isaac Witt, of lawful age, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Grant:
Q. What is your name? A. Isaac Witt.
Q. Where do you live?
A. About a mile east of Excelsior.
Q. What was your business in 1914?
A. I was farming, and working some at the mine.

Q. Where were you living at that time?
A. Prairie Creek.
Q. Were you around Prairie Creek on the 6th of April?
A. Yes, sir.
3240 Q. Do you know anything about this meeting or meeting they talk about over at the school house?
A. Yes, sir, I was there.
Q. Tell the jury what you did and saw there that day.
A. Well, I was clearing a piece of ground, and I had started to work that morning, and I heard the band, the first I knowed of the meeting at all. I heard the band and [seed] a lot of people going, and I just pulled out and went to the meeting.
Q. Did anybody invite you to go, or did you just volunteer?
A. Yes, sir, I just volunteered.
Q. You followed the band? A. Yes, sir.
Q. How many people were there when you got there?
A. There was quite a crowd, about somewhere around a thousand or fifteen hundred.
Q. Who were in that crowd—merchants or miners?
A. All classes of people, merchants, miners, farmers and all classes.
Q. What happened after you got there?
A. Well, there was just a crowd there, like a picnic.
Q. Did they have anything to eat there?
A. I didn't get anything to eat. Some of them there said they had something to eat. They said some of them sent and got some stuff at Hartford.
Q. Like a picnic? A. Yes, sir, like a picnic.
Q. Were there women and children there?
3241 A. Yes, sir.
Q. How many people were in that crowd, as near as you can estimate it? A. How many people?
Q. Yes.
A. I suppose there was right close to 1500 people.
Q. How far did you live from what is called the bull pen?
A. About a quarter of a mile.
Q. State whether or not there was any shooting in that bull pen between the 6th of April and the 17th of July.
A. Yes, sir, there was shooting down that way all the time.
Q. Describe the character of it, about how often, and so on.
A. I wouldn't say how often, but you could hear shooting pretty often down that way.
Q. Toward the bull pen or in the bull pen?

A. It was down that way. I couldn't say whether it was in the bull pen or not.

Q. But it was down toward the bull pen?

A. Right down by it.

Q. You could hear the reports of the guns? A. Yes, sir.

Q. Did you hear any rumors concerning the shooting up of Frogtown? A. Yes, sir, I heard talk about it.

Q. State what that rumor was.

A. I just heard them talking about Frogtown being shot up one night. I don't know anything about it, only them rumors I heard about it.

3242 Q. Did you see any of the guards of the Bache-Denman Company around Prairie Crek on the road?

A. Oh, yes, they went right by my house every time they went to town.

Q. How were they traveling?

A. They would go in a wagon, and they had their guns with them. They had high powered guns, looked like they were high powered guns.

Q. Going back and forth through the community?

A. Yes, sir, they would go by two or three in a wagon.

Q. State what effect it had upon the ladies in the community? Were they afraid of that?

A. They was afraid, yes, sir. My wife was afraid to go anywhere by herself.

Q. Are you a member of the miners' union?

A. No, sir.

Q. Were you at that time? A. No, sir.

Mr. Grant: That is all.

Cross-Examination

By Mr. Drinker:

Q. You were around there during the battle, were you?

A. During the battle?

Q. Yes, July 17th.

A. Yes, sir, I was there at the same place.

Q. You didn't belong to the union? A. No.

3243 Q. Do you remember whether before the battle somebody passed there and called you to get your folks, that there was going to be trouble? A. Yes, sir.

Q. You testified to that on the hearing of some of those fellows who were up for contempt, in May, 1914?

A. I believe I did. Somebody passed there and told me to get my family out and get out.

Q. There were several people in the party that told you that? A. I don't remember. It was before day.

Q. And you followed their advice and took your folks over to Hartford?

A. No, sir. I took my folks to my brother-in-law's, down near Midland, back off the road.

Q. That is what you said. You said you heard shooting when you got your folks to Haskins. Haskins was your brother-in-law? A. Yes, sir.

Q. You understood before that battle that there was going to be trouble down there, didn't you?

A. I supposed there was, by them telling me to get my folks out. I didn't know anything about it myself.

Q. Didn't you know what was going to happen? Didn't you know the Bache men were going to be run out?

A. I didn't know what was going to happen.

Q. This business about the shooting up of Frogtown, did you believe that the guards had come into Frogtown and shot into the houses or shot at the people?

3244 A. Well, sir, I didn't know anything about it.

Q. What did you think? Did you think they were over there trying to do that?

A. Well, I don't know about that.

Q. Did you think they had nerve enough to do that?

A. They seemed to be pretty nervy, the way they passed by with their guns. I didn't know whether they would or not.

Q. Did you ever hear that the union men had shot up things in Frogtown to start something going? A. No, sir.

Q. Did you ever hear that said by anybody?

A. No, sir, I don't know that I ever did.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness Excused.)

TIP SLOAN, of lawful age, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Grant:

Q. Your name is Tip Sloan? A. Yes, sir.

Q. Where do you live now? A. Monroe, Oklahoma.

Q. Where were you residing in 1914, about the time of the trouble at Prairie Creek?

A. About two miles and a half east or northeast of Hartford.

Q. What was your business at that time?

3245 A. Farming.
Q. What is it now? A. Farming.
Q. How near did you live to the Prairie Creek mine?
A. I lived half a mile, something like that.
Q. While you were living there did you see the guards from the Bache-Denman mines around your premises?
A. Yes, sir.
Q. Tell the jury where they were when you saw them?
A. There was a big ridge right above my house, something like half or quarter of a mile. Those guards were placed up there around that ridge.
Q. What did the guards do, if anything, with reference to your premises?
A. They was a shooting around there, and rolling rocks off the ridge. It was about 300 or 250 feet, something like that, from my house up to the top of the ridge. They rolled rocks off the ridge down around the house.
Q. Would the rocks they rolled off the ridge roll down to the house?
A. Yes, sir. The house was just down on the level, and the ridge was real steep, and they rolled rocks off of there.
Q. Your house was located down under the hill?
A. Yes, sir.
Q. And they rolled the rocks off the top?
A. Yes, sir.
Q. Did they roll onto your house or onto your premises?
3246 A. Yes, sir, around the house.
Q. Did you have a family there? A. Yes, sir.
Q. What did it consist of?
A. My wife, three children and my mother-in-law, an old lady 75 years of age.
Q. Did those guards come through your premises?
A. They come through the place. The well was just back of the house down in the flat. The guards would come down there to get water at the well.
Q. How would they be traveling— on foot?
A. On foot, just marched down through the yard to the well and got the water and then they would go back up on the ridge.
Q. State whether or not they would be armed when they would come through your yard?
A. Oh, yes, they all had guns.
Q. What effect, if any, did that rolling of stones and carrying guns through your premises have upon your family?
A. My family was afraid of them.

Q. (By Mr. Drinker) What did you say?
A. My family was afraid of them. They didn't want to stay there.

By Mr. Grant:
Q. Why?
A. I couldn't work and stay there at the house with them.
Q. Did you move away on account of the guards and that condition existing there? A. I did.

Mr. Grant: Take the witness.

3247 Mr. McDonough: Before cross-examining this witness your Honor, I want to ask for an attachment for a witness. We had a subpoena issued for Sidney Richards, served in St. Louis. He arrived here this morning, and two men met him at the station and put him in an automobile and carried him down the street here just a moment ago. I would like to have an attachment for him. We have no power to bring him in otherwise.

The Court: Very well. File an affidavit.

Mr. McDonough: Is an affidavit necessary?

The Court: A sworn statement. Proceed with the trial.

Cross-Examination

By Mr. Drinker:
Q. How many were in your family?
A. There were five besides myself.
Q. Were you the only man? A. Yes, sir.
Q. Who else lived around there near you?
A. Grandpa Dunn lived about 500 yards.
Q. They were all union men living around there, were they not? A. No, sir, they wasn't.
Q. They were all either union men or union sympathizers in that whole country, were they not? A. I guess so.
Q. Solid 100 per cent? A. Well, not—
Q. Not what?
A. I don't suppose they was all union men.
3248 Q. Who was not in sympathy with the union? Name a few?
A. I couldn't name anyone, because I don't know.
Q. Name somebody that was not 100 per cent union in that country, outside of the people on the Bache-Denman property at that time?

A. I couldn't name anybody, I don't believe. I couldn't call one to memory now.

Q. You can't remember anybody that wasn't?

A. No, sir.

Q. How many people lived around in there, within half a mile of the Bache-Denman property?

A. There wasn't anyone lived between where I lived and the Bache-Denman property, and I was something like a half a mile from it. I had some neighbors that lived about a quarter or a half a mile away from me, still further south and east.

Q. Were they union men?

A. They were farmers. They didn't belong to the union?

Q. Were they union sympathizers?

A. They might be. I don't know how they felt.

Q. Those people you saw around there with guns, do you know whether they were United States marshals?

A. No, sir.

Q. Don't you know they were United States marshals?

A. No, sir.

Q. Didn't you see United States marshals there with guns? A. No, sir.

Q. You don't know whether these men with guns were United States marshals or not?

3249 A. I don't know.

Mr. Drinker: That is all.

Redirect Examination

By Mr. Warrum:

Q. Did they act like United States marshals? A. No.

Mr. Warrum: That is all.

Recross Examination

By Mr. Drinker:

Q. How do United States marshals act?

A. (The witness was in the rear of the room and his answer was inaudible to the reporter.)

Mr. Drinker: I withdraw the question.

(Witness Excused.)

JOHN BUMPUS, of lawful age, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Grant:

Q. What is your name? A. John Bumpus.

Q. Where do you live?

A. I live in Bill Johnson Township, Sebastian County.

Q. You testified at the former trial of this case?

A. Yes, sir.

Q. What was your business in 1914 and what is it now?

A. Farming.

Q. Are you married?

3250 A. Yes, sir.

Q. What did your family consist of in 1914?

A. I believe there was 6 children and me and my wife.

Q. How far did you live at that time from the Prairie Creek mine, the Bache-Denman mine?

A. I guess about a quarter.

Q. About a quarter of a mile from the mine?

A. Yes, sir.

Q. State whether or not you saw any guards around the Bache-Denman property? A. Oh, yes.

Q. What were they doing when you saw them?

A. They were just in there guarding, and sometimes they would go down to the creek or spring to haul water.

Q. State whether or not they went armed on those trips?

A. Yes, sir, always.

Q. Did you have to get water from that same spring?

A. Yes, sir.

Q. Did you farm there near the spring?

A. Yes, sir, my field was right by the road. There is a road right around the creek, and the spring is under the creek bank.

Q. State whether or not those guards came on your premises and interfered with you in your farming?

A. No, they didn't do that.

Q. Was there any shooting down around there?

A. Yes, sir, there was some shooting.

Q. Tell the jury about that.

3251 A. Well, they was shooting there every day and night in the stockade or whatever you call it.

Q. Shooting in the stockade? A. Yes, sir.

Q. What direction were they shooting in?

A. I couldn't tell you that. I could just hear them shooting there.

Q. Did they shoot up toward Frogtown?

A. I don't think so. It was on the outside there.

Q. Did you have any altercation or any trouble with them?

A. There was a lot of them run across my field one day there, about 40 of them, and I told them to keep out of the field, running across my crop, and one of them threatened to shoot me. That was about all.

Mr. Grant: Take the witness.

Cross-Examination

By Mr. Drinker:

Q. When you say he threatened to shoot you, were you afraid he was going to shoot you?

A. I didn't know whether he was or was not. I couldn't tell.

Q. Did you know he was joking?

A. He might have been and he might not have been. I don't know about that.

Q. These 40 people, were they United States marshals?

A. I don't know whether they was marshals or guards. They was there and had guns.

Q. When was that?

3252 A. That was before the trouble they had over there. I couldn't tell you the date.

Q. Was it along in June.

A. I believe it was in June. That is my recollection.

Q. This thing you call a stockade, just what was that?

A. They had rope stretched up around the mine, and they had electric lights all around there. I could see at my house as plain as day time. I guess they had a hundred electric lights there.

Q. They had a wire cable stretched from the fence on one side to the fence on the other?

A. Yes, sir, there was a fence across to the other field, on each side of the tipple. There was two fences along there.

Q. There were two fences? A. Yes, sir.

Q. And a rope from one to the other? A. Yes, sir.

Q. One on one side and one on the other? A. Yes, sir.

Q. That is what you call a stockade?

A. Yes, sir. They had put a notice up there, big letters on a card, that said nobody was allowed in there except their employees.

Q. There wasn't any fence built up, a board fence or anything like that, that you couldn't see through?

A. They had ropes stretched there. They had an injunction against anybody going in there except employees.

3253 Mr. Drinker: That is all.

The Court: Stand down.

(Witness Excused.)

HARVE SHAFER, of lawful age, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. What is your name? A. Harve Shafer.
Q. Where do you live? A. Hartford.
Q. Where were you living in 1914?
A. I was at Poteau.
Q. Speak louder.
A. Poteau.
Q. Poteau? A. Yes, sir.
Q. What was your business in 1914?
A. I was driving a dray around there until I come up here.
Q. Did you go to work for the Bache-Denman people in the spring of 1914? A. Yes, sir.
Q. Tell the circumstances under which you were employed there?
A. Well, I come to Ft. Smith and I met some boys in Mullen's saloon, and they said they was working down there and I could get a job there, and so I went down there. I stopped in Midland a few days, and then I was transferred
3254 down to No. 4 at the mine, and was working there a little. I was only there, I would judge, between two and three weeks.
Q. Do you remember when that was or about what time?
A. I was there along about that middle of June, along about the 20th or somewhere along like that.
Q. You were engaged by those fellows in the saloon, and you went down on the train with the others?
A. My family was with me.
Q. Anybody else?
A. Some of the other boys.
Q. Whe you got off the train, how were you met?
A. We wasn't met by nobody there. There was a hack met some of them and took them down there, but I stayed in Midland three or four days.
Q. Then you went over to Prairie Creek? A. Yes, sir.
Q. Had you mined coal before that time?
A. Yes, sir.
Q. Whereabouts?
A. I worked all over the country.
Q. You worked at mining all over the country?
A. Yes, sir.
Q. Did you do any mining after you got down there?
A. I worked four or five pieces of days.

Q. You worked four or five pieces of days? A. Yes, sir.
Q. Is that right?
3255 A. Yes, sir.
Q. What time did you leave that camp after you got there?
A. I was there the day the big battle started.
Q. You were there on the day of the big battle?
A. Yes, sir.
Q. How many weeks would that be, after you got there?
A. I would judge about three.
Q. Were you given a gun after you got down there?
A. Yes, sir.
Q. What kind of a gun?
A. A high powered rifle.
Q. How many guns did you see around in that stockade or camp? A. Everybody had a gun, pretty well.
Q. Was there a hundred guns there, or seventy-five, or a hundred and twenty-five, or what number?
A. I would judge between 75 and 100 around there.
Q. Any pistols?
A. Yes, sir.
Q. Did they wear pistols?
A. Yes, sir.
Q. Who wore pistols?
A. I don't know their names, quite a number.
Q. Did the guards wear pistols?
A. Yes, sir, some did and some didn't.
Q. Were pistols sold at the commissary? Did they have a store there? A. Yes, sir.
3256 Q. Do you know whether or not pistols were sold at the store?
A. I don't know whether they were sold or not, but rifles was give to the people there for protection. That was what mine was given to me for.
Q. When you were there do you know whether or not liquor was brought into that camp?
A. I brought some in myself, is about all I know.
Q. Do you know whether or not any of the guards or other employees would come to Ft. Smith and buy liquor and bring it there? A. No, I couldn't say that.
Q. Did you see liquor there?
A. Yes, I drank a lot of it there.
Q. You drank a lot of it there?
A. Yes, sir.
Q. Did you see other people drinking it there?
A. Yes, sir.

Q. Was any gambling going on there?
A. Yes, sir.
Q. Where were they gambling there?
A. All around there, everywhere.
Q. What did they play—poker or craps?
A. Poker and dice.
Q. Dice and cards?
A. Yes, sir.
Q. Where did they play cards?
A. Anywhere on the grass, on a blanket.
Q. Did you see any of the guards getting drunk?
3257 A. I saw three or four of them around there pretty well loaded.
Q. Did you hear any shooting going on in the camp during the time you were there?
A. Yes, sir, a little bit once in a while.
Q. When?
A. I lived a half a mile from the bull pen.
Q. You lived a half a mile from the bull pen with your family? A. Yes, sir.
Q. In the bull pen they had some dog tents for the unmarried men, didn't they?
A. I don't know. They was fixed up there pretty well.
Q. Some of them slept under the trees? Is that not true?
A. I never seen none of them sleeping under no trees.
Q. Then there was a bunk house where the unmarried men lived?
A. Yes, sir, they had a bunk house there.
Q. Did you ever see any of them shooting off their guns when they were intoxicated?
A. No, sir, not right in the bull pen. I have heard it, though at night, and through the day when I wasn't there, when I would be at home. I generally hung around home pretty well.
Q. Do you remember the Sunday previous to the battle of July 17th? A. Yes, sir.
Q. What occurred on that Sunday with reference to your trip to Frogtown?
A. There was a couple of guards come to me and wanted to know if I could get some whiskey for them. I told them yes. I went over to Frogtown, and they went part of
3258 the way with me, but they was [oneasy] to go down there themselves, and I went to Charley Robinson's house and asked Sandy Robinson if he knowed where I could get something to drink. He said, "Wait, and as soon as I eat my dinner I will go with you, and we can get something."

And I never waited. I went on up to an Italian woman up there, that they called Black Annie, and I got a sack of beer and come on back.

Q. Bottled beer?

A. Yes, sir. When I was coming up the hill Sandy Robinson and Robbie Robinson and a couple of others was coming up the road, and Sandy whistled at me and asked me, he says, "I am ready to go now, if you want it." I said, "I have got all I need now." And I met both guards that was with me, and they stopped there, and one of them says, "What does them fellows want?" I said, "Them are friends of mine. They just followed me up here, and wanted to get more whiskey for me. They didn't think I got any—beer, rather. They was wanting to show me where to get it." One of the boys said, "Why not fire out a few shots down through there?" I told them, "No use to do that. There is no use to raise no trouble. There is liable to be enough trouble after while, anyway. There is no use to raise it now." I said, "Them fellows are not going to hurt nobody."

Q. You said you got some beer in a sack?

A. Yes, sir.

Q. And you took it over to the guards?

A. I and those two guards come over there together, and they stopped down there. The guard that was at the
3259 post, he stayed there, and me and the other went on down to the camp.

Q. The guard who was at the post remained at his post?

A. Yes, sir.

Q. And you and the other two came on?

A. Yes, sir.

Q. Where did you go with the liquor?

A. Down pretty well close to my house, down below my house, and went into an empty house and drank some of it, and they taken the rest of it with them, and I went back home.

Q. How many men were in the stockade during that time?

A. I would judge 75 or 100.

Q. How many were armed?

A. Well, now—

Q. Half of them?

A. I didn't see very many around there that were not armed.

Q. The day of the battle, did you leave in company with any other employees?

A. Yes, sir.

Q. How many went out with your party?

A. I left with my family. We went up on the hillside, and then we taken them over toward Frogtown, and we met quite

a bunch of men there and one come up to me and he says, "We don't want you, Shafer. You take off down through that field there. There is liable to be some hotheads come up here and they are liable to hurt you." He says, "I don't think you have done anything. We only want them dam sons-of-bitches that was doing that shooting over there.

3260 Q. Did you have a gun with you?
A. No, sir.
Q. You had thrown away your gun?
A. We throwed away about 9 or 10 of our guns.

Mr. Warrum: That is all.

Cross-Examination

By Mr. Drinker:
Q. Who was it that [you] told you that?
A. I don't know.
Q. You never saw him before?
A. Not as I know of.
Q. He was a union miner? You know that?
A. I couldn't say that.
Q. Do you say Sandy Robinson told you where you could get all the liquor you wanted?
A. Yes, sir, he said he would get it for me.
Q. Was there any regular liquor stores there?
A. There was two or three joints there.
Q. Was it sold in the open?
A. No, sir. You had to go in and kind of slip it out.
Q. Did you have prohibition in Arkansas?
A. You had to kind of slip it out.
Q. Did they have prohibition in Arkansas in 1914?
A. No, these was blind tigers.
Q. These were blind tigers?
A. Yes, sir.
Q. Where were they?
3261 A. They was there in Frogtown.
Q. Right in Frogtown?
A. Yes, sir.
Q. Frogtown was a solid union town?
A. I judge it was.
Q. Any liquor that was up at the Bache-Denman mine, the Bache-Denman men got right in Frogtown?
A. No, sir, they couldn't have got it all there.
Q. Do you know where they did get it? You said you didn't know where they got it?
A. They probably got it in Ft. Smith and other places.
Q. Where did you get what you got?

A. I got it from Black Annie, an Italian woman.
Q. In Frogtown? A. Yes, sir.
Q. Did Sandy Robinson and the other union men know about Black Annie? A. I suppose so.
Q. Do you remember Cooper Langford? Was he boss there? A. He wasn't a boss when I was there.
Q. Who was? A. Bud Eustis.
Q. Did he ever fire anybody for being drunk when you were there?
A. Not as I remember of. He told Ross Gellett that us fellows would have to sober up if we wanted to work. He said he was going to put us out of the camp.
Q. He said he would put you out of the camp if you
3262 didn't stop drinking?
A. He didn't tell me that direct. He told Ross and Ross told me.
Q. What do you mean by the "bull pen"?
A. That means a big notice posted up there that nobody is allowed to come in only employees.
Q. What do you mean by "pen"? Was there anything built up there so that the men couldn't get out?
A. There was a rope around.
Q. All you had to do to get out was to stoop under the rope and go out? A. If you was allowed to do that.
Q. Weren't you allowed to go out under the rope?
A. They told us not to go out, but I did, anyway. I went where I wanted to go.
Q. Did they tell you you must not go, because you might be beaten up? A. Yes, sir.
Q. But you were allowed to go if you wanted to take the chances? A. I would go anywhere I wanted to.
Q. The word "bull pen" is a regular union word that applies to a place where non-union men are working, is it not?
A. I don't know. That's the first time I was ever around one myself.
Q. If it was a Sunday school house, and non-union men were in it, that would be a bull pen, wouldn't it?
A. I can't answer that. I don't know.
Q. Don't you know that the union men call a bull pen
3263 or stockade any place where scabs are kept, no matter what kind of building it is, if it is an open field, even? Isn't that right?
A. I would call the bull pen, a bull pen in a penitentiary, or road camp or anything like that.
Q. Isn't that a fair statement, that what they mean by a bull pen is nothing more or less than a place where scabs

are kept and it doesn't mean a stockade or any place that the men can't get out of or anything of that kind? Isn't that a fair statement, man to man?

A. Well, the way I looked at that, it is a place where convicts or men guarded under a sentence, I should call that a bull pen myself. Of course, if a man is a free man and is just told not to go under that line, he is just taking chances himself.

Q. Now, don't you know that is not what I asked you, Mr. Shafer? What I want to know is whether—we have heard a lot of talk about bull pens and stockades. Isn't that an expression or term of the union miners, when they say "bull pen", they mean a place where scabs are kept, and it means they can go in or out, as they want to. Isn't that a fair statement? Answer that question.

A. I don't know. I am not smart enough to answer that question, I don't think. I don't know what it means.

The Court: Proceed with something else.

Q. These men that had guns, were they United States marshals? A. I think there were about two.

Q. Weren't there 40 marshals down there at one time?

A. I never seen no forty.

3264 Q. There were a lot of them there?

A. Yes, sir.

Q. Didn't a whole lot of them come down there and go back again?

A. I never seen them.

Q. Were there a number of men there waiting for the mine to get started up? A. Yes, sir.

Q. And they had nothing to do until the coal got ready to dig?

A. Yes, sir. There was nothing doing around there in the way of coal digging.

Q. There were 30 or 40 men around there that had nothing to do but sit around?

A. Yes, sir.

Q. And they played cards sometimes?

A. Yes, sir.

Q. And sometimes threw dice?

A. Yes, sir.

Q. And some men shot their guns at a mark and such as that? A. Yes, sir.

Q. Did you see them shooting at a mark?

A. Yes, sir.

Q. What else did they do? Never mind that. They were amusing themselves the best they could and waiting to get ready to dig coal?

A. I judge that is what they was trying to do, but they played for money.

Q. Did you play for money?

3265 A. Yes, sir, I played for money and won quite a bit.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness excused.)

THOMAS SKIDGEL, of lawful age, called as a witness in behalf of defendants, having first been duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. What is your name?

A. Thomas Skidgel.

Q. Where do you live? A. Montana.

Q. Where did you live in 1914?

A. In the same vicinity.

Q. Did you go to work at the Bache-Denman mine at No. 4 Prairie Creek in the Hartford Valley?

A. Yes, sir.

Q. What month? A. June.

Q. 1914? A. Yes, sir.

Q. Where were you employed?

A. Where was I hired at?

Q. Where were you when you were hired?

A. I was here in Ft. Smith. I had started to Oklahoma City and met some of the boys in town and got to drinking, and I was going out to Hartford to catch that road

3266 down to Oklahoma City, and there was a bunch of boys persuaded me to get off or asked me to get off, and I got off there with them and was hired after I got to the mine.

Q. You met some of the boys and went with them to the mine and you were employed there?

A. Yes, sir.

Q. And you were met there by some of the guards?

A. Three or four guards met us at the mine switch.

Q. Were you there at the time of the big battle?

A. No, sir.

Q. How long were you there?

A. I was there about three weeks.

Q. Do you know how long it was before the battle of July 17th that you left?

A. The best I remember it was about the 27th of June when I left.

Q. What, if anything, do you know about gambling in that camp while you were there?

A. Well, it was going on all the time, as far as that is concerned.

Q. Were you single at that time?

A. Yes, sir.

Q. Are you married now?

A. Yes, sir.

Q. You had been a union man before that?

A. Yes, sir, once before.

Q. Are you a miner now?

A. Yes, sir.

3267 Q. And belong to the union?

A. Yes, sir.

Q. Where did you live in the bull pen? I mean in that camp? A. Where did I live?

Q. Yes, where did you sleep or stay?

A. Practically under the shade of a tree or in a coal car or any place I could get.

Q. It was warm weather?

A. Yes, sir, in June.

Q. There were some houses outside of the enclosure at that No. 3 camp? A. Yes, sir.

Q. And some houses or shacks within the bull pen where the married men lived?

A. Yes, sir.

Q. And a bunk house where single men stayed?

A. Practically all of the foreigners, such as hunks, occupied the bunk house.

Q. And some tents?

A. There was tents brought there after I was there a while. When I first went there, there wasn't no tents. They sent the marshals out there and they brought some tents.

Q. Those tents were left there?

A. Some few were left there.

Q. State what, if anything, you know of liquor being in that camp and drinking going on?

A. There were generally always pretty plenty of it

3268 there.

Q. Do you know of any quarrels between the guards and employees or between the guards themselves when drinking? A. That was quite frequent, yes, sir.

Q. Did you play in any of those gambling games?
A. Yes, sir.
Q. Did you drink with them?
A. Well, some little bit; not a great sight.
Q. Where did they get the liquor?
A. Well, there was somebody generally always on the road from Ft. Smith over there, and they would generally bring it in with them. Nearly every day somebody would come in there and bring some stuff with them.
Q. Was there any shooting going on?
A. Practically most every day there was more or less of it.
Q. How many guns did you see in that camp?
A. Well, I couldn't say exactly. I suppose there was somewhere near 75 of those high powered Winchester, and most everybody had a short gun.
Q. By "short gun" do you mean a revolver or some gun that could be put in your pocket?
A. Yes, sir, a pocket pistol.

Mr. Warrum: I believe that is all.

Cross-Examination

By Mr. Drinker:
Q. You were not in the trouble? A. No, sir.
Q. Outside of this talk about the armed guards, did
3269 you see any bull in that bull pen?
A. Any bull in that bull pen?
Q. Yes.

The Court: Oh, well, I think we understand that.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness excused.)

3270 Cicero Phillips, called as a witness on behalf of defendants being first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. State your name to the court and Jury?
A. Cicero Phillips.
Q. Where do you now live?
A. I live two and a half miles east of Hartford, Arkansas.
Q. What is your present business?
A. Well, mining and farming.
Q. What are you doing at this time, farming or mining?

A. Well,—
Q. Both? A. Both.
Q. Are you now married?
A. Yes, sir.
Q. And have a family?
A. Yes, sir.
Q. What did you do in 1914?
A. Farming.
Q. And were you married at that time?
A. No, sir.
Q. Did you go to work for the Bache-Denman people in the latter part of June, 1914?
A. Yes, sir.
Q. Where were you employed, do you remember?
A. I believe I was employed here in Ft. Smith.
3271 Q. Do you remember who employed you or engaged you? A. Yes, sir, Bob Morris, was with me.
Q. Was there several of you taken down on the train to the camp? A. Some three or four.
Q. Who met you at the train and took you to the camp?
A. I don't know who they was.
Q. Were they armed guards?
A. Yes, sir.
Q. Did you do any work after you got there?
A. A little bit.
Q. What kind of work, down in the mines or on top?
A. On top, unloading some coal out of wagons.
Q. How long did you remain at this camp?
A. About fifteen days I guess.
Q. Where did you sleep or stay nights?
A. I slept some in coal cars, under the tipple, and some out under the shade trees.
Q. Now state to the Court and jury whether or not there was any drinking in this camp when you were there?
A. Yes, sir, there sure was.
Q. To what extent?
A. There was right smart of it.
Q. Do you know where they got their liquor?
A. No, sir.
Q. Did you see any of the guards drinking?
A. Yes, sir, I saw one.
3272 Q. Did you do any drinking yourself?
A. No, sir.
Q. Did you see any employees drinking?
A. Yes, sir.

Q. Did you see any people in there that were intoxicated or under the influence of liquor, in this camp?

A. Yes, sir.

Q. State what you know, if anything, of their gambling in this place?

A. Well, there was right smart of it.

Q. What kind of gambling was it?

A. Playing poker and shooting craps, and they had some other kind of a game, I don't know what you call it.

Q. Where did they carry on those games?

A. All around the bunk house, and out in the bushes.

Q. Was there any shooting going on at this camp?

A. Yes, sir.

Q. Who did the shooting?

A. I don't know who it was, I never saw it, but I heard it.

Q. Did you hear it?

A. Yes, sir, most of the time at night, more at night than in the day.

Q. Were they shooting in the stockkade or camp?

A. No, sir, it was mosly just away from the camp a little ways; just away from the tipple.

Q. Just a short distance from the tipple?

A. Yes, sir.

3273 Q. Did this go on frequently or seldom?

A. It was every night.

Q. There was a good deal of noise made there on some occasions? A. Yes, sir.

Q. How many rifles did you see, or high powered guns in this stockade?

A. I don't know how many, there must have been seventy-five or a hundred.

Q. Did you see any pistols carried there? A. Yes, sir.

Q. How many people there would you say were carrying pistols [stapped] on them?

A. I seen some four or five or six.

Q. Did they have plenty of ammunition? A. Yes, sir.

Q. Do you know about the store commissary in the stockade? A. Not very much about it.

Q. Do you know of any lude woman being in that camp?

A. Yes, sir.

Mr. Drinker: I object to this,—well, let it go.

Q. What do you know of that.

A. Well, there was quite a few of them, some three or four.

Q. They would come and go from time to time?

A. Come and go.

Cross-Examination

By Mr. Drinker:

Q. How old are you?

3274 A. I am 26 years old.

Q. 26 now? A. Yes, sir.

Q. You were sixteen or seventeen at the time then?

A. Somewhere around about that.

Q. Did you take your turn at guarding?

A. No, sir, I never had a gun in my hands.

Q. They did not trust you with a gun?

A. No, sir.

Q. There were United States marshals there, were there not? A. I don't know.

Q. Why did you quit?

A. I had all the money I wanted.

Q. You made all the money you wanted and then quit?

A. Yes, sir.

Q. How much did you have? A. I think $50.00.

Q. You were not afraid of anything going to happen?

A. I was not scared very bad while I was in there.

Q. Were you afraid somebody was coming to run you fellows out of there?

A. I never had thought anything about it.

Q. You never had what?

A. I never had thought anything about it.

Q. What do you suppose those marshals were there for?

A. I didn't know there were any there or not.

Q. You were not a bit afraid anything was going to

3275 happen to that Camp?

A. No, sir, it looked like to me there were plenty of guns to protect it.

Q. Protect it against what? A. Anything.

Q. What did you think that they were there to protect against? A. I didn't know.

Q. You had no idea what those guns were there to protect against? Is that right? Is that right? You had no idea what all those guns were to protect against?

A. I supposed they were there to protect against the union people.

Mr. Drinker: That is all.

(Witness excused).

C. E. VALENTINE, called as a witness on behalf of defendants being first duly sworn testified as follows:

Direct Examination

By Mr. Grant:

Q. Your name is C. E. Valentine? A. Yes, sir.

Q. Where do you live? A. Huntington.

Q. What is your business?

A. I am an insurance man now, managing an insurance department.

Q. What were you doing in 1914?

A. Running a confectionery store.

Q. Where?

3276 A. At Huntington.

Q. Do you remember April 6th, 1914?

A. Yes, sir.

Q. What happened on that day, if you recall, with reference to Prairie Creek?

A. Well, a couple of nights before this, I was playing in the band you know,—

Q. You were a member of the band?

A. Yes, sir and the leader, I am not sure it was the band leader, I am not positive about that, asked us if we would go to Prairie Creek to a picnic and play for a picnic there the next day or a couple of days afterwards.

Q. Did your band go out and play for that picnic?

A. Yes, sir.

Q. What time in the day did you go out there?

A. Rather early.

Q. When did you get back?

A. I came over to Midland and went down on the slicker, about 6:00 or 6:30.

Q. You are not a miner or did not belong to the miners union at that time? A. No, sir.

Q. Just went over with the band to furnish music.

A. Yes, sir.

Q. What was the character of that crowd as to being business men, farmers, and so forth?

A. It seemed to be a general mixture.

3277 Q. A general mixture of what?

A. Of people, different classes,—you mean the class of people?

Q. Yes.

A. Just a general mixture of people; kind of a picnic bunch, if you know the usual run of picnics.

Q. The general run of citizens in that section?

A. Yes, sir.
Q. Were there any women and children there?
A. Yes, sir, there was.
Q. About how many would you estimate being in that crowd? A. There were several,—you mean,—
Q. The whole body.
A. It looked to me like a thousand people, something like that.

Mr. Grant: Take the witness.

Mr. Drinker: No questions.

(Witness excused.)

JOHN W. GOOLSBY, called as a witness on behalf of defendants being first duly sworn, testified as follows:

Direct Examination

By Mr. Grant:
Q. Just state your name to the reporter?
A. John W. Goolsby.
Q. Where do you reside? A. Hartford.
Q. What is your profession? A. Lawyer.
Q. Were you residing at Hartford in 1914?
3278 A. Yes, sir.
Q. Where were you that day, were you in Hartford or around there? A. What day.
Q. I mean April 6th, 1914?
A. No, sir, I was not at Hartford that day.
Q. Did you have any occasion, between April 6th and July 17th, 1914, to make trips on the train between Prairie Creek and Greenwood? A. Yes, sir.
Q. State whether or not you saw any of the guards of the Bache-Denman people at the station there where freight was unloaded, and the train stopped occasionally on trips through there? A. Yes, sir, I saw them perhaps several times.
Q. Just describe that?
A. One time in particular that I remember. They were not at the station, however, they were back toward Midland from the station.
Q. Did the train stop at that point? A. Yes, sir.
Q. Now tell what they were doing when you saw them?
A. Well, these guards were just lined up along the side of the railroad track on the edge of the woods. On this particular evening, we were going from court at Greenwood. Court was in session at Greenwood at the time,—and there was

quite a crowd, and the train was long. It was a freight train with some passenger cars on behind, and we were all in
3279 the rear end of the train, and they were unloading freight up toward the front. There were some men back there with rifles, and I noticed one of them, at least one of them, had a pistol, and they got into a fuss with some men that were on the train, and the men that were on the train were fixing to get off and fight with them, and some of us got up and prevailed on them to stay on the train and not have any difficulty. There were lots of ladies on the train.

Q. Was the controversy started by the guards or passengers?

A. I think both sides were as willing as they could be; it seems like it was a mutual controversy. They got to cussing each other, the men on the ground were cussing those on the train, and the men on the train were cussing those on the ground.

Q. And these men were armed with rifles and pistols?

A. Yes, sir.

Q. Something was said about Frogtown having been shot up, do you recall about that?

A. Nothing only what was rumored in town.

Q. What were those rumors?

A. It was rumored in town that Frogtown was shot up, and it seems to me like it was the second night before the day of the battle, I think one day intervened between that night and the day of the battle, some folks came in from Frogtown claiming their homes had been shot into and camped just back of my home. There was a little vacant spot back of my home that was called the city park, they had a band stand and stuff back there, and they came down and camped there that night.

Q. Did you see the people there the next morning?

3280 A. Yes, sir, they came in that night, during the night.

Q. Were there any women and children among them?

A. Yes, sir.

Q. Did you see Pete Nichols, a crippled boy?

A. I saw a crippled boy, and as I recall it he was in a wheeled chair, but I didn't know him at that time.

Q. He was with that party that camped there?

A. Yes, sir.

Cross-Examination

By Mr. Drinker:

Q. Who pointed out the crippled boy to you?

A. My little boy.

Q. He called your attention to it? A. Yes, sir.

Q. He was being wheeled along the road, was he?
A. They were camped back of my house.
Q. Was this in the daytime?
A. The next morning.
Q. Did your boy know him?
A. No, sir, he didn't know him. He was just sympathizing with the boy.
Q. Who did you hear had shot up Frogtown?
A. I just heard these reports that the guards did.
Q. Who reported it?
A. The people that were camped there?
Q. Those union fellows?
A. Those people that were camped there.
3281 Q. They told you that the guards had done it?
A. Yes, sir.
Q. How did they happen to tell you that?
A. They were telling why they were camped there, and they said the guards had shot up the town.
Q. Did they tell you they knew it, or they guessed it?
A. They said they had shot into their houses, I can't recall the exact conversation.

(Witness excused).

MRS. SARAH HOBBS, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grant:
Q. Your name is Mrs. Sarah Hobbs? A. Yes, sir.
Q. Where do you live?
A. I live at Prairie Creek.
Q. How long have you been living in that part of the country? A. I lived there about fourteen years.
Q. You were living there then in 1914?
A. Yes, sir.
Q. How far were you living at that time from the Bache-Denman Prairie Creek mine?
A. About a quarter of a mile.
Q. About a quarter of a mile? A. Yes, sir.
Q. What were you living at?
3282 A. I was living in a tent at the time of the trouble.
Q. You were not at Prairie Creek on April 6th, at that picnic? A. No, sir.
Q. Now, were you interfered with in any degree by the guards from the Bache-Denman camp or company there?

A. No, sir.
Q. Was there any shooting done there?
A. Yes, sir, there was shooting down.
Q. Now describe the shooting and what direction it was and what damage it did?
A. It came from out of the mines, and right across in front of our tent, and they shot the limbs off of the trees.
Q. Where were the trees located?
A. Right in front of my [ten].
Q. Right in front of your [ten], and how many times did that occur? A. The limbs were only shot off one time.
Q. How many times did the shooting occur?
A. I can't tell you that.
Q. Was it frequent? A. Yes, sir.
Q. Did that shooting disturb you in any way?
A. Yes, sir.
Q. What did you finally do about it?
A. I went to Hartford to my daughter's.
Q. You left there? A. Yes, sir.
Q. Who went with you?
3283 A. My husband and two daughters and my little boy.

Cross-Examination

By Mr. Drinker:
Q. Your husband was a union miner?
A. He was an engineer.
Q. He was a member of the union? A. Yes, sir.

(Witness excused.)

MRS. PEARL ASHLEY, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grant:
Q. Just state your name? A. Mrs. Pearl Ashley.
Q. Where do you live? A. Prairie Creek.
Q. Where were you living in 1914?
A. At Prairie Creek.
Q. Between April 6th and July 17th, 1914, were you living there?
A. I lived in Hartford part of the time, and Prairie Creek part of the time.
Q. Mrs. Hobbs is your mother, is she? A. Yes, sir.
Q. State whether or not there was any shooting done by the guards at the mine of the Prairie Creek Company, the Bache-Denman Company during that period of time?

A. Someone did shooting down there.

3284 Q. Could you hear the shooting? A. Yes, sir.

Q. From which direction did it come, where did it appear to be from?

A. It appeared to be from down around the mine.

Q. Now, can you state which direction the bullets came?

A. Well, we thought they came from down toward the mine.

Q. Did they fall around your place, hear them strike anything?

A. Not except the limbs off the trees in front of our house, the small twigs and leaves.

Q. About how much shooting was done and how often did it occur? A. I can't tell, it occurred real often.

Q. Was it frequent or not?

A. Yes, sir, more at nights than in the daytime.

Q. What effect did that have on you your family there?

A. It scared us.

Q. Did you remain there constantly, or move away?

A. We went to Hartford.

Cross-Examination

By Mr. Drinker:

Q. Your brother was a union-miner, was he?

A. Yes, sir.

Q. Where did he work?

A. I don't recall just where he worked at that time.

Q. Where you were living was right near the camp?

A. Yes, sir.

Q. How far away?

3285 A. It was right in the camp, right across the road.

Q. So that if there would be a fight between the men in the camp and people outside, you would have been right in the way?

A. We were not right close to the mine; the mine sets a little out of the camp.

Q. And how far was the mine from where you were?

A. I would say about a quarter of a mile.

Q. Did you hear your brother or father or any of the men say who it was that shot up Frogtown?

A. No, sir, they never did.

Mr. Drinker: Thank you, that is all.

(Witness excused.)

MRS. JAMES MEEKS, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grant:

Q. State your name please? A. Mrs. James Meeks.

Q. Where do you live Mrs. Meeks? Now, speak out loud.

A. Well, at that time I lived about a half a mile from Prairie Creek.

Q. That was in 1914? A. Yes, sir.

Q. Did you and your husband live together there?

A. Yes, sir.

Q. Do you know a man by the name of Andrew Beck, at that time? A. Yes, sir.

3286 Q. Do you know where he was working between April 6th and July 17th?

A. I can't say where he was working, but he was around about the mine.

Q. What mine was that? A. No. 4 Prairie Creek.

Q. That is the Bache-Denman mine? A. Yes, sir.

Q. Did he have a little girl at your house? A. Yes, sir.

Q. Did Mr. Beck come to your house at any time during the period of time I have mentioned? A. Yes, sir.

Q. What hour of the day or night did he get there?

A. I would think something after midnight.

Q. Was your husband at home? A. No, sir.

Q. State whether or not he was intoxicated or sober?

A. The way he acted I would think he was drunk.

Q. What did he do or say to you?

A. Well, he didn't have much to say to me, he was talking to his little girl mostly.

Q. Did he say anything to you whatever?

A. I told him I didn't like for him to come to my place, that I was afraid and he said, "Well, he was not afraid, that he had the difference."

Q. He had the difference?

3287 A. He had the difference with him.

Q. And what did he do right after that?

A. He talked to his child a little while longer and then went outside and closed the door behind him.

Q. Now, you stated that he got up and left after you told him you didn't want him there? A. Yes, sir.

Q. And what happened just after he went out the door?

A. He must have unloaded his pistol.

Q. Did you hear the reports of the pistol?

A. Yes, sir.

Q. Was that on your porch?

A. On my door step, there was no porch.

Cross-Examination

By Mr. Drinker:

Q. Do you remember when this was, actually?

A. I can't say, but something about the 15th of April, I judge.

Q. About the 15th of April? A. Yes, sir.

Q. Was it before the school closed, you remember school closed there?

A. I can't say, because I had no children at that time large enough to go to school, and I don't know.

Q. You don't know whether it was before school closed or not? A. No, I don't.

Q. Was it after the time that they had the rumpus down there, the first one? You remember when they had the picnic?

A. That was the 6th of April.

3288 Q. And how soon after that was this, about a week after that, do you think?

A. I would judge about that, or maybe two weeks.

Q. Maybe two weeks? A. Yes, sir.

Q. But it was shortly after that? A. Yes, sir.

Q. What is your husband's full name?

A. J. H. Meeks.

Q. He testified here the other time, did he in this case?

A. Yes, sir.

Q. And then he did not have to testify this time because they read his testimony? A. Yes, sir.

(Witness excused).

Miss Addie Dunn, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grant:

Q. Your name is Miss Addie Dunn? A. Yes, sir.

Q. Are you the daughter of Mr. James Dunn?

A. Yes, sir.

Q. Where were you residing in 1914?

A. A mile and a quarter southeast of mine No. 4.

Q. Were you residing with your father at that time?

3289 A. Yes, sir.

Q. Do you know anything about meeting any of the guards at the Bache-Denman property on the road or anywhere, in your travel around with your father? A. Yes, sir.

Q. Now, explain to the jury what you met and what you saw and what happened?

A. Well, we were going after cattle one evening and three of the guards came running toward us with rifles.

Q. Speak loud so that these gentlemen may hear? What happened?

A. Then we ran off and left them, and went down the mountain, down the hill about 200 yards, and went on home. They didn't bother us or say anything to us.

Q. What were you and your father doing out there?

A. Looking for cattle, it was our duty to go after the cattle every evening.

Q. Did you get your cattle that evening? A. No, sir.

Q. Why? A. Because they frightened us away.

Q. How would you have to travel in bringing your cattle home of an evening? A. They ranged around mine No. 3.

Q. Did you travel the public road going home with your cattle? A. Yes, sir.

Q. Were you on the public road when these guards came to you there?

3290 A. Yes, sir.

Q. You say they had rifles with them? A. Yes, sir.

Q. How far did the guards follow you and your father?

A. About two hundred yards.

Q. Did you see those guards frequently carrying rifles there or not? A. Yes, sir.

Q. State whether or not at any time you and your father were met by any of the guards, in a buggy?

A. Well, we were going to Midland one evening and two of the guards stopped us.

Q. These gentlemen can't hear you. You say you were going to Midland one evening? A. Yes, sir.

Q. And tell the jury what happened?

A. Two of them stopped us, and asked where we were going, and we told them to Midland and they said they would let us go this time but not to come back around that way any more.

Q. Were you traveling the public road that day?

A. Yes, sir.

Q. The road that the public traveled all the time?

A. Yes, sir.

Q. Did these guards have guns on that occasion?

A. Yes, sir, they were armed.

Q. What did they do?

A. They just leveled their guns on us.

3291 Q. Did you and your father stop your horse at that time? A. Yes, sir.

Q. Did you and your father go to Midland at that time?
A. Yes, sir, we went two miles out of the road.
Q. You did not travel that road any more?
A. No, sir.

Cross-Examination

By Mr. Drinker:
Q. How old are you now?
A. Twenty-five.
Q. And your father was a union miner?
A. Yes, sir.
Q. And did you have any brothers?
A. Yes, sir.
Q. How many?
A. Three, but they are small.
Q. Is Pink Dunn, one of your brothers?
A. No, sir.
Q. A cousin?
A. No, sir, an uncle.
Q. What is your brother's name?
A. James, Jr., and William and Jack, but they are small.
Q. They are all smaller than you?
A. Yes, sir.
Q. And how many uncles did you have?
A. About five.
Q. Were they union miners?
3292 A. Yes, sir.
Q. All of them?
A. Yes, sir.
Q. Lived right around there?
A. Yes, sir.
Q. They lived right there?
A. Yes, sir, pretty close.

Mr. Drinker: Thank you very much.

(Witness excused.)

Mr. Warrum: We will read from the testimony of PETER GRAHAM, given at the former trial of this case, beginning on page 2700; he is now living in California.

"Direct Examination

By Mr. Covington:
Q. State your name.
A. Peter Graham.
Q. Do you have a son Peter Graham?
A. I have a son Peter Graham, too, yes, sir.

Q. Where do you live, Mr. Graham?
A. At the present time I live at Excelsior?
Q. How long have you lived down in that settlement?
A. At Excelsior?
Q. In that particular section of the country?
A. You mean Excelsior?
Q. I asked you where you live?
A. I have been living down there, we have been down there, we moved down there in August, but I have
3293 been down there since the 15th of May.
Q. What is your occupation?
A. Well, I am trying to operate a little pigeon hole down there.
Q. Operate a mine?
A. Yes, sir.
Q. Did you live in Prairie Creek in 1914?
A. Yes, sir.
Q. What part of Prairie Creek did you live?
A. I lived at Frogtown.
Q. Frogtown, I mean. How long have you been engaged in that business?
A. I have been working in the mines since I was eight years old.
Q. Since you were eight years old?
A. About 52 years.
Q. Mr. Graham, did you have occasion to meet up with any of the guards at the Bache-Denman mine No. 4, during the spring and summer of 1914, that is, to see them?
A. Yes, sir, I have saw them, saw them passing by on the road, and I have been down there, I went one time down to the depot, Prairie Creek depot one evening, drove down there, and I saw some men there with guns, and some more get off the train, and they were getting provisions off the train and putting it in a wagon and carrying it off.
Q. Did you ever see any of them over in Frogtown?
A. No, I never saw any of them really over in Frogtown, except up at Mammoth Vein.
3294 Q. Up at Mammoth Vein?
A. Yes, sir.
Q. Do you know anything about them shooting promiscuously around over the country there?
A. I heard it, but I didn't hear it or see it. I happened to be in Hartford the day that it was reported there was some shooting down there around the tipple.
Q. I am not asking what was reported; I am asking you what you know about it?

A. I don't know anything about it, except just what I heard.

Q. Did you have any shooting in Frogtown in July, 1914?

A. Yes, sir, on the Sunday before they had the battle, as we call it, on the 17th; me and my wife, we went to Hartford that morning, Sunday morning, and stayed until late in the afternoon. We went to church and Sunday school, and then went home with an acquaintance and stayed until late in the evening, and we came home and done up our work and went to bed; and the first thing we knowed, we were aroused by some shooting; I heard three or four shots and I jumped up out of bed. I didn't know what it was, we lived up on top of that ridge, on that map, I see it there, and this shooting was down in Frogtown, down below us.

Q. You lived up on the hill?

A. Yes, sir, and we didn't know what it was, and we got up and went out on the porch and we could see the flashes and hear the reports, and hear loud talking, but we couldn't tell who or what it was, so we just stayed there, and went
3295 in the house and put on some more clothes, and we just stayed around there; we didn't sit on the porch very much, because that was too open a place, and we didn't know what was going to happen, and the shooting kept on, and we got in behind some of those trees in front of the house, and stood there and watched the flame and the fire fly from the shots, but we didn't know who it was doing the shooting.

Q. It was dark?

A. Dark, yes, sir.

Q. You couldn't tell who was doing the shooting?

A. That is just about, you take it from the top of the hill down to where we saw the shooting, it was pretty near a quarter of a mile.

Q. Did you remain at home the remainder of the night?

A. No, we stayed around there until everything got quiet and then we went down over the hill, and found out from the neighbors down below there what it was, or what they said it was.

Q. Somebody had been out there shooting up the town?

A. Yes, sir.

Q. Now, did you see any of these non-union guards on July 4th?

A. Yes, sir; me and my wife; we generally, we used to take a drive long before there was any open shop there, or anybody had any thought of anything of the kind, we used to drive down to a spring on the creek, very frequently in the evening, and our horse didn't have nothing to do except

when we did drive it out a little like that; and we would
3296 go down that way and that was about all it had to do, and we drove down there, and as we drove past No. 4, the crossing, the railroad there close to No. 4, there was a bunch of Bache employes setting on a pile of ties, and they tipped their hats to us, and we never paid any attention to them, and I suppose it kind of ruffled them up a little bit, because we went on down to the spring, and it was beginning to get a little late, and we took a drink of water, we took our glass down there and supped the water a little, and then came on back, and as we came on back the whole lane was lined up out there.

Q. On what side of the road?

A. It was just across the road, the whole thing, I suppose there were 20 or 30 men there probably, and I said to my wife, "You keep quiet, there is something going to happen here."

Q. You needn't tell what you said to your wife.

A. I thought there was something going to happen, and I made up my mind if anything happened here I was going through that crowd, that it was a holdup game, it looked like it; and I drove on, I didn't trot, just in a walk, and they lined up on both sides of the road, and the wheels of the buggy rubbed their clothes when we went on through.

Q. Just room enough to get through?

A. Yes, sir; and they taunted and made some remarks, but I don't know what they were.

Q. They made some side remarks?

A. Yes, sir.

Q. Did any of them have guns on that evening?

3297 A. There were some men there with guns, I suppose they were guards. I saw, as I went down past, some men by the side of the fence, in among the trees, men with guns.

Q. You were acquainted with most of the men in that community? A. Yes, sir.

Q. Been there for a long time?

A. Oh, yes, I knew most of the people there.

Q. It was none of those people that lived there?

A. No, sir.

Q. Mr. Graham, you have lived in that settlement a long time, and most of the citizenship in that valley, they are people that have been raised in that valley, and raised their families there?

A. Yes, sir, they have been raising their families there.

Cross Examination.

By Mr. Hull:

Q. Mr. Graham, I understood your house was up here on this ridge? A. Yes, sir.

Q. You lived up here? A. Yes, sir.

Q. Frogtown is over in here?

A. Frogtown is down in the hollow there.

Q. Down in this hollow here? A. Yes, sir.

Q. Now your house is up here on the middle of this ridge?

A. You know where that lane goes up from the main road?

[A]. I am sorry I don't, if this is a true representa-
3298 tion of that ridge, is that the middle of it?

A. If you will give me permission to come over there.

Q. Will you come down here, please?

A. Now, this represents the house.

Q. And where was your house?

A. My house was over this way.

Q. And that is the lane, I suppose?

A. Yes, sir, and runs right up to it, and I was just on this side over there.

Q. Now, point out to the court and jury where the flashes of guns were?

A. Let's see, this is the lane over here, is it?

Q. This is the main road. This is one of the roads.

A. That runs to Hartford?

Q. Yes, that comes down here.

A. And this is the road up through Frogtown, is it?

Q. I don't know.

A. Anyway, this is the lane that runs down here?

Q. Yes.

A. This is the lane that runs to the school house now, and this is the road to Hartford. They were shooting down in about here (indicating).

Q. Now, you are indicating this forked road, the one with the four corners? A. The four corners.

Q. Where the lane makes the four corners with the road to Hartford?

3299 A. Yes, sir, and this is where you come down through here?

Q. About how many flashes did you see down there?

A. Oh, there were a whole lot of them.

Q. You saw a whole lot of them,—how many?

A. Possibly 150 or 200 shots.

Q. 150 or 200 shots, were they all together?

A. Oh, no; they were at intervals; sometimes an interval of two or three minutes before another.

Q. How many flashes did you ever see at once?
A. Oh, I couldn't count them, there would be a whole blaze of fire there sometimes.
Q. You would assume there were 30 or 40 guns fired at the same time?
A. Maybe 15 or 20 shots fired at the same time, from the amount of flashes.
Q. You could see the different, separate flashes?
A. Yes, sir.
Q. About what time was that?
A. That was on Sunday night.
Q. About what time I mean?
A. Well, I couldn't tell you; that was, I presume it was somewhere between nine and ten o'clock; of course, I never looked at the time; we jumped up out of bed, and I didn't look at the time.
Q. Had you just gone to bed?
A. Oh, we were asleep.
3300 Q. You were asleep? A. Yes, sir.
Q. Did you go into Hartford that night?
A. No, sir.
Q. You did not? A. No.
Q. Were you living there with your family?
A. Yes, sir.
Q. Was your family there with you that night?
A. Yes, sir.
Q. What did your family consist of?
A. My wife and myself.
Q. And you didn't go and join the rest of them, and go on into Hartford? A. No, not that night.
Q. Did you go at any time?
A. I didn't go into Hartford that week, I was sick.
Q. You didn't move your family into Hartford before the battle? A. My wife stayed in Hartford one night.
Q. What night was that?
A. I can't tell you that, either Tuesday or Wednesday night.
Q. Tuesday or Wednesday night before the battle?
A. Yes, sir.
Q. Do you know why she went in there?
A. Yes, sir, I can tell you why. I had two daughters that had families there, and a son that had a family there,—no, one daughter had her family there, and a son, and my son
3301 didn't have any way of conveyance, and my wife took him in our buggy, and took the children into Hartford, and one night there was a report come there, they called them the scabs, that they were coming over in behind

the creek, and my wife run down there, and she took Andrew's children all into Hartford; and she was too late, it was too late for her to come back, so she stayed.

Q. Did she stay in there until after the battle was over?

A. No, sir.

Q. Was she at home on the night of the battle?

A. We were in Hartford on the day of the battle, but we were at home the night after the battle was over.

Q. The night that the battle [bagan,] at night, were you in Hartford that night?

A. When the battle began that night?

Q. If the battle begun early Friday morning, were you at home Thursday night? A. Yes, sir.

Q. What time did you leave home?

A. We left home after six o'clock.

Q. Did you usually get up and go to Hartford like that?

A. I had been sick all week, and had not been at work for seven or eight days, I had been sick.

Q. And why did you go to Hartford that morning?

A. We went to Hartford, and prearranged, and my wife made the arrangements when she was over with John Griffith.

Q. You got up about six o'clock, and had not heard any shooting before you left?

A. No, sir, we had not heard any shooting that morning.

3302 Q. You didn't hear any shots about four o'clock that morning?

A. I think possibly we heard a shot one time about twelve o'clock, the night before.

Q. About twelve o'clock the night before? A. Yes, sir.

Q. Where was that shooting?

A. I [can'] tell you exactly where it was at, but I can tell you where it sounded like. It sounded like up at the fork of the road, by the store.

Q. You didn't go to Hartford that morning because of any trouble that you were afraid was coming off? A. No, sir.

Q. You had not heard anything about any trouble coming?

A. No, sir.

Q. Now, can you point out where that road was where there were 20 or 30 men holding you up?

A. They didn't hold me up.

Q. That you thought were going to hold you up?

A. Let me see now. The Midland Valley Railroad,—

Q. That is over here? A. And No. 4?

Q. No. 4 is here, and here is Prairie Creek.
A. This is the road.
Q. Testify so the reporter can get it.
A. Here is the school house.
Q. And this is where you were held up, where the men were?

A. When we went down over there, that road in here,
3303 we went down to the creek, and when we came back they were lined up right in here; this road there where you cross the track.

Q. There were 20 or 30 of those men there?
A. There must have been that many.
Q. You say all that had happened on the way down, you tipped your hat to them? A. No, sir.
Q. They tipped their hats to you, and you didn't acknowledge the salute?
A. That is all we done, as far as I know.
Q. And that is the only reason, as far as you know, for them blocking the road? A. That is as far as I know.

(Witness excused.)"

Mr. Warrum: We will next read the testimony of Mrs. Peter Graham, from the former record, being found on page 2707.

"Direct Examination

"By Mr. Covington:

"Q. You are the wife of Mr. Graham that just testified?
A. I am.
Q. You live at Prairie Creek? A. I did live there.
Q. You lived there in 1914? A. In 1914.
Q. Do you remember some shooting there [on] night, shooting into Frogtown, by anyone, sometime in July?

A. Yes, sir, I do.
3304 Q. Do you remember what time it was in July?
A. Sunday night, before the 17th.

Q. The Sunday before the battle? A. Yes, sir.
Q. And about what time of night was it?
A. I didn't look at the clock, but we had gone to bed and were asleep, and it wakened us up, it must have been ten o'clock or something like that, perhaps a little later.
Q. Did you leave home at any time after that?
A. I went and taken the children into Hartford the night that my husband stayed, and came back the next morning? Yes, I taken them in one evening after that, but I came back home and stayed at home.

Q. Mrs. Graham, did you have any trouble on the road from Huntington with these guards, or employes of Bache's, on the highway, and if so, tell the jury what it was?

A. I was coming home from Huntington, and these men that were working there, as my husband stated, we lived just above the mine about 200 yards, and had to pass it to come home; and I was driving along the road, and there was a lady in the buggy with me, and they came out from there just before I turned in, where I turned in, well, it was down maybe as far as from here to the back of the building there.

Q. Out from where?

A. From the Mammoth Vein mine; they were up there at this time working; and they drove out with a wagon load of them, and there two men in the front seat with guns,
3305 and two in the [bank,] and they drove out, like I was on the road here and was going to turn out, and they drove in like this, and run me and my buggy, the wheels over into the ditch, and as they passed they hollered and hurrahed at me, and I didn't say anything, I didn't want any trouble with them.

Cross-Examination

By Mr. Hull:

Q. Where was this, near Mammoth Vein No. 17?

A. Yes, sir, on the public road, over the hill here.

Q. On the other occasion that your husband told us about, about your being down here, and about some men forming themselves across the road, will you tell us about that?

A. We went out for a drive, as he stated, and as we went on down across the track, they were sitting on a pile of ties.

Q. How many were there there? A. At that time?

Q. Yes. A. As we went down?

Q. Yes.

A. There were six or seven when we went down.

Q. Who were they, do you know?

A. They were these men on the inside.

Q. How do you know that?

A. Because I have saw them going in and out there when I was down there, and saw them going from the train, and saw them going from Mammoth Vein, as I would be on the road.

Q. Mammoth Vein No. 1?

3306 A. Yes, sir, our house is burned down now, there is no house there, and that is the reason it doesn't show it on the map there.

Q. You see Mammoth Vein No. 1?

A. Yes, sir; may I step back there?

Q. Yes, surely. And here is No. 4 over there.

A. And we went down the public road, and cross the river, and here is where our house was, up here, and here is the mine, and they came out along here.

Q. And you went over here, this road here?

A. No, not that road.

Q. You came along this road here?

A. Yes, sir, we came along the public road and crossed the Midland Valley.

Q. Now, you were down near No. 4 a great deal?

A. No, not around No. 4; that was the only time I was ever around No. 4. I used to go down to Mrs. McGinns', right down at the depot.

Q. At Prairie Creek depot? A. Yes, sir.

Q. That is here (indicating)? A. Yes, sir.

Q. You never were down here except this once?

A. Except the one time when I came from Huntington,—I didn't come that way, I came around by No. 6.

Q. Now, when you used to come down to Mrs. McGinnis', what did you used to see down there?

3307 A. I saw them getting off of the train, and going over under guard to No. 4.

Q. Saw whom getting off?

A. The non-union men, I supposed; they went in there, I saw them again up at Mammoth Vein.

Q. Up at Mammoth Vein; when was that?

A. It was sometime in July; I don't know just what time in July it was.

Q. You saw them up there operating Mammoth Vein No. 1?

A. I can't say whether they were or not; they were up there.

Q. How many were up at No. 1?

A. Quite a few of them.

Q. The same ones that you saw down at the crossing that day? A. Some of them were.

Q. Some of them were; and what were they doing at No. 1?

A. I don't work in the mines, and it would be hard for me to tell you, they were just working about on the top.

Q. Just working about on the top of Mammoth Vein No. 1? A. Yes, sir.

Q. And that is the only other way you got to know those men? A. Yes, sir, they would pass on the public road.

Q. That was in July? A. Yes, sir, sometime in July.

Q. How many men were working around No. 1?

A. I can't tell you that.
Q. Approximate it?
A. Quite a few; 20 or 30, maybe more; I don't know;
3308 I couldn't be positive about how many there were, because I never stopped to count them.

Redirect Examination

By Mr. Covington:

Q. Mr. Graham, how long have you lived in that community down there?

A. I have been there nine years; I have been there seven years this time, and I lived there one year before that; and then I lived there five years; I have been there fifteen years most all the time.

Q. You know a great many of the people in that community? A. I knew the people in the Hartford Valley.

Q. It was not any of those that stopped you on the road and put you out in the ditch, was it? A. No, sir.

Recross Examination

By Mr. Hull:

Q. It was none of those people that you knew that were working at No. 1, in July?
A. They came out from Mammoth Vein.
Q. They came out from Mammoth Vein No. 1?
A. Yes, sir.
Q. As I say, it was not any of the people that you knew, that you saw working at Mammoth Vein No. 1, in July?
A. I don't understand the question.
Q. I simply asked you if you knew the people around there? A. Yes, sir.
3309 Q. And if those people down in No. 4, you said they were not the people that you knew [ere] residents of the place?
A. No, sir, they were not the residents of the place.
Q. And I am asking you the same question about the men at No. 1?
A. No, sir, they were not the ones that I knew.
Q. I neglected to ask you, where you were on July 17th, the day of the battle? A. I was at Hartford.
Q. About what time did you go?
A. About six o'clock in the morning.
Q. Do you remember the occasion of your going?
A. My husband was sick, and I went into Hartford with him.
Q. Went in to the doctors?
A. Not to the doctor's particularly.

Q. Where did you go? A. To John Griffith's.
Q. You didn't hear any shooting before you left?
A. No, sir.
Q. You didn't hear any shooting at daybreak that day?
A. No, sir.
Q. On the way to Hartford did you meet any armed men, men with guns? A. No, sir, I did not.
Q. Any men coming out from Hartford to Prairie Creek?
A. Not any more than I always do.
Q. You always meet men coming out with guns?
A. I didn't see any with guns I told you.
3310 Q. You didn't see any with guns that morning?
A. I did not.
Q. How many did you meet that didn't have guns?
A. Two or three, except; just as we always meet men going and coming on the public highway, more or less.

(Witness excused).

Mr. Warrum: We next offer the testimony of Ed Ables, from the former record, beginning at page 2666.

"Direct Examination

"By Mr. Covington:
"Q. State your name. A. Ed Ables.
Q. Mr. Ables, where did you live in the summer of 1914?
A. At Camp Beulah.
Q. At what is called Prairie Creek?
A. Yes, sir, —Frogtown.
Q. Did you know any of the guards or employees of the Bache-Denman Companies at No. 4?
A. Know any of them?
Q. Yes. A. No, sir, I didn't.
Q. Did you know them when you saw them?
A. Well, no, I didn't know all their names personally.
Q. I didn't mean that. Did you see them going in and coming away from the mines? A. Yes, sir.
3311 Q. Were they armed? A. Part of them was, yes.
Q. Part of them were armed? A. Yes.
Q. Did you ever visit the place over at Camp Beulah run by Macolina Dupont? A. Did they ever visit there?
Q. Yes. A. Yes, sir.
Q. In what business was she engaged? A. Selling beer.
Q. And they came over there to her place? A. Yes, sir.
Q. Did you see them there more than once?
A. Yes, sir, I saw them there several times.
Q. Did you see them there at any time in July?

A. Yes, sir.
Q. What time before the trouble at No. 4?
A. I seen them there several times during the Sunday that Camp Beulah was shot up.
Q. [Hod] did they go over there, in a car?
A. In the morning they came over there in a car and stopped the car on the top of the hill near her place and went down an alley. During the day it seems that they came down to that switch to the left of me, and my place was connected to the pasture and there was a gate at the corner of the pasture and the corner of my lot, and they came down there and went through the center of my cornpatch and crossed
3312 up to Mrs. Dupont's, we called her; they went over through my corn patch to her place and crawled through the wire fence until I stopped them. I stopped a bunch crossing through my place.
Q. Did you have crops there?
A. I had a truck patch. I had put it in corn that year.
Q. And they walked across that? A. Yes.
Q. Did they ever become intoxicated on any of these trips and use any kind of language?
A. Not that I know of. They seemed to carry stuff off. They seemed to be going in there and getting the stuff and carrying it away.
Q. In what direction were they taking it?
A. Toward No. 4. They would come out and go toward No. 4.
Q. Were you in Frogtown the night it was shot up?
A. Yes.
Q. What did you do? A. I emigrated.
Q. Where did you emigrate? A. To Hartford.
Q. Did you take your family with you?
A. Yes, sir, I sure did.
Q. When did you come back?
A. Not until after the 17th, that is my family didn't. I came back to feed the chickens and the pigs.
Q. Then you would go back to Hartford?
A. Yes, sir, backwards and forward.
3313 Q. You were a miner there too? A. Yes, sir.
Q. What time of the year was that shooting that occurred on Sunday night?
A. The first one was early. My wife and I had laid down and dozed off to sleep and they commenced shooting and it woke us up. Usually, around Hartford, when a shooting takes place that way it is a fire alarm. And my wife said to me, "Ed you better get up there is a fire somewhere." And

I got up and went to the kitchen door. It is not really the kitchen door, we use it for a bed room, but it is on the kitchen side of the house and it sets up against the house like that (indicating) and it is a door in the end of it. I went to that door and opened the door and looked out and on the lower end of my lot was where the shooting was taking place. I still didn't think anything much about it and after the shooting died down I went back to bed and went to sleep.

Q. I thought you said you went to Hartford?

A. I did go to Hartford. I went back and went to sleep. Later then, —my son was at Hartford that night, and my son came in. He was cut off by those shots. He had started home and was cut off by the shots, and he came to the fence and hollered. I was asleep and he came to the door and rapped on the door and said, "Papa, are you all killed?" And I was excited and just jumped up and said, "What is the matter," And he said, "The scabs have got the place surrounded and are shooting up Frogtown." I said, "Is that what the shooting was?" And he said, "Yes,
3314 you better get up and get out," and I did so.

Q. And you got up and went to Hartford with your family? A. Yes, sir.

Q. What time of the night was that?

A. About 11:00 o'clock.

Q. You lived on the outskirts of Frogtown on the hill?

A. No, right next there to the creek in the east corner.

Cross Examination:

By Mr. McDonough:

Q. Mr. Ables, what was it your son remarked when he came in?

A. Well, he said, he hollered for us and said he thought we were all killed, he said we had better get up and get out, get away. The scabs, he called them, he said was all around the place.

Q. Your son had been at Hartford?

A. Yes, sir, he had been at church.

Q. What age was he? A. That has been four years ago.

Q. What age?

A. That's been four years ago, he was 21 years old.

Q. 21 at that time? A. Something near 21.

Q. Was he a union miner? A. Yes, sir.

Q. Was he working at that time?

A. I don't remember whether he or I either were working at the present time or not.

3315 Q. Had you been out with him? A. No, sir.

Q. Immediately after that you got up and left did you? A. Yes, sir, we got up.

Q. And took your family?
A. Partially dressed, yes, sir.
Q. How many in the family?
A. My wife and three children besides the boys.
Q. All of you went to Hartford that night? A. Yes, sir.
Q. Walked. A. Yes, sir.
Q. Where did you go when you got to Hartford?
A. Tom Quinn, a brother-in-law.
Q. Did you find them up waiting for you?
A. No, sir, we woke them up.
Q. Did you see anybody on the way to Hartford?
A. Yes, sir. lots of them.
Q. Going all the same direction you were going?
A. Yes, sir.
Q. Did you see any going the other way?
A. I can't say, there might have been some going the other way.
Q. They were neighbors that were going with you?
A. They were people from Frogtown.
Q. Did you see anybody else along there?
A. Along the road?
3316 Q. Yes, except those that lived in Frogtown?
A. No, sir.
Q. How far is it from Frogtown to Hartford?
A. It is called two miles.
Q. Two miles. Where did the other people go that went along with you?
A. They scattered over the town wherever they had relatives. I suppose, or any place they had friends.
Q. About how many were in that crowd?
A. Oh, I can't say.
Q. Give your best estimate of the number of people that were along with you?
A. I couldn't say, they were in front of us and behind us.
Q. You were there?
A. Oh, yes. My family was all that was in my bunch.
Q. About how many men do you think [ere] along, and women and children, altogether?
A. I can't say, they were behind and in front, too.
Q. Was there a hundred?
A. No, there was not that many in camp, I don't suppose.
Q. What? A. There, was not that many in camp?
Q. How many were there then, twenty-five?
A. Oh, there was that many or more.
Q. Where did your son work at that time, I didn't understand you?

A. I say I don't remember, I can't remember whether he was working anywhere or not. No. 7 Central was the
3317 last place where either of us worked.
Q. You are not working now? A. Yes, sir.
Q. Where now? A. Roughley's.
Q. And where is your son working now?
A. Bull Moose.

Redirect Examination

By Mr. Covington:

Q. Mr. Ables, I don't know that I understood you, but you said at the time of the first shooting you were in the bed?
A. Yes, sir, at the first shooting we were in the bed.
Q. And then your son came up and aroused you, and you started off, and how far from the house did you get before the second shooting began?
A. We just cleared Frogtown.
Q. How was the shooting as to the number of shots, a great many?
A. I couldn't be safe in saying how many shots there were fired.

Recross Examination

By Mr. McDonough;

Q. Give your best judgment of the amount?
A. Oh, I don't know.
Q. Two or three hundred shots?
A. Well, I don't know, there were lots of [thos], I couldn't say how many?
Q. Pistol shots?
A. They were too big for pistol shots.
3318 Q. Could you tell us whether they were shot guns or rifles?
A. I couldn't tell whether they were shot guns or rifles, but they were too heavy for pistol shots.

(Witness excused.)"

Mr. McDonough: With reference to the attachment of Sidney Richards, I would like to withdraw it. Mr. Richards later appeared, and he claimed that his drive in the automobile had nothing to do with this case, and that the men that took him had nothing to do with the case, and I asked the marshal to return the [attchment] unserved, stating that I would ask the court to dismiss it.

The Court: An attachment from this court is in the nature of a criminal offense, and I am glad you have made that statement.

Mr. McDonough: As long as I made the other I thought I should make this.

Mr. Grant: We offer the testimony of PETER NICKOLLO taken from the former trial and found on page 2715.

"Direct Examination

By Mr. Covington:

Q. What is your name A. Peter Nickolle.

Q. Where do you live? A. Frogtown.

Q. Frogtown, this county? A. Yes, sir.

3319 Q. How long have you lived there? A. 14 years.

Q. Were you at home in July, when Frogtown was said to have been shot up? A. I was in Hartford.

Q. You were what?

A. I was in Hartford, me and my family.

Q. Were you at home when the shooting occurred?

A. We were at home at night; what day do you mean?

Q. On Sunday night?

A. Yes, sir, on Sunday night we were at home.

Q. What did you do?

A. We walked the floor until they quit shooting that night; and me and my wife and my children, we never moved that Sunday.

Q. Did you leave [hom] on any night, and if so, why?

A. Yes, sir, we left the next night.

Q. The next night? A. Yes, sir.

Q. Where did you go?

A. We go to Hartford to stay at night, at Hartford.

Q. And you stayed all night at Hartford? A. Yes, sir.

Q. Did you walk?

A. Yes, sir, and I had a hard time the first night, that night with the crippled boy, I had him in a chair and was behind him pushing.

Q. You pushed your crippled boy into Hartford?

3320 A. Yes, sir.

Q. In a wheel chair?

A. Yes, sir, and part of the time they pulled with ropes, and I sure had a hard time that first night.

Q. You left your home you say on account of the shooting that occurred there, and you took your boy and went into Hartford,—I say it was on account of the shooting that you left home? A. Yes, sir.

Cross Examination.

By Mr. McDonough:

Q. What day did you leave home? A. On Monday night.

Q. Did you stay at home on Sunday night

A. Yes, sir, we stayed home on Sunday night, and we all walked the floor.

Q. Were you a neighbor of Mr. Hunter?

A. I am a [nighbor] of his.

Q. Do you remember the day of the week that the battle took place?

A. Let me see, it was on Friday, I believe, I was not home, I was in town.

Q. July 17th? A. Yes, sir, I was in town.

Q. You were in town that day? A. Yes, sir.

Q. You had gone in town the night before?

A. Yes, sir, and we stayed all night and left the next day.

3321 Q. What time did you leave your home, what time of day on Thursday?

A. On Thursday,—well, we left every night after Sunday night, and this Monday, Tuesday, Wednesday and Thursday, we go five nights straight.

Q. You left your home at what time Thursday?

A. Thursday?

Q. Yes. A. On Thursday before dark.

Q. A little before night? A. Yes, sir.

Q. And went into Hartford? A. Yes, sir.

Q. Were you in Hartford during that night?

A. Yes, sir.

Q. And stayed at Hartford the next day?

A. We came back in the morning and leave the evening of the next day.

Q. How is that?

A. We came back after dinner, and leave the next day.

Q. Now, you went into Hartford on Monday night?

A. Yes, sir.

Q. And went back from Frogtown on Tuesday morning?

A. Yes, sir, on Tuesday morning.

Q. And you went back to Hartford on Tuesday night?

A. On Tuesday night, yes.

Q. And went back to Frogtown on Wednesday morn-

3322 ing? A. Yes, sir, on Wednesday morning.

Q. And the same thing Wednesday night and Thursday morning? A. Yes.

Q. And when you went back to Hartford on Thursday night, you didn't come back to Frogtown until the afternoon on Friday? A. Until the afternoon sometime on Friday.

(Witness excused.)"

WHITNEY HARGER, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. State your name? A. Whitney Harger.
Q. Where do you live now?
A. At Coal Hill, Arkansas.
Q. What is your present business? A. Farming.
Q. Where did you live in 1914? A. Alice, Arkansas.
Q. What was your business then? A. Mining.
Q. You had done some mining? A. Yes, sir.
Q. Were you employed at any time during 1914 to work at the Bache-Denman mines at No. 4 Prairie Creek?
A. Yes, sir.
Q. [Where] you engaged, employed?
3323 A. I was [enaged] here as water boy.
Q. Where were you when you were hired?
A. Right here in this town, Ft. Smith.
Q. What place in Ft. Smith, where were you?
A. I came to Ft. Smith and I got to drinking and struck up with a boy I knew down [hom].
Q. What was his name?
A. DeQuasy, and I told him I was looking for a job and he told me to go with him and he could get me a good job.
Q. Were you both drinking?
A. I don't know whether he was or not, I was.
Q. Now, did you go down with DeQuasy and anyone else to Prairie Creek?
A. I went down with him and four or five others.
Q. When the train stopped who met you?
A. Some armed guards, four or five of them.
Q. And took you out to the Prairie Creek camp?
A. Yes, sir.
Q. Were you married at that time? A. No, sir.
Q. Are you now? A. Yes, sir.
Q. Have you a wife and children or just a wife?
A. A wife and children.
Q. You were unmarried at that time? A. Yes, sir.
Q. About what time was this?
3324 A. It was between the first of July and the 4th.
Q. And how long did you stay there?

A. I stayed there until the battle.
Q. You were there at the time of the big battle?
A. Yes, sir.
Q. Where did you stay, where did you sleep?
A. I slept in a tent.
Q. You slept in a tent? A. Yes, sir.
Q. They had some tents there, small tents? A. Yes, sir.
Q. And they also had a camp there near No. 3 where some of the married men slept? A. Yes, sir.
Q. And a bunk house there where some of the married men stayed? A. Yes, sir.
Q. Within the inclosure? A. I don't know.
Q. What did you call that down there, this enclosure? Was it called the "bull pen"? A. Yes, sir.
Q. Did the guards call it the bull pen? A. Yes, sir.
Q. Then I will. Now, did they have a bunk house within the bull pen? A. I don't know.
Q. Now, what did you do after you went down there?
3325 A. I was water boy for a few days.
Q. Do you remember any of the guards that were there? A. Yes, sir.
Q. Name some of them?
A. Harry Dunlap, Pat Malloy, I believe is all I can remember.
Q. And Charles Peek? A. Yes, sir.
Q. Was he there? A. Yes, sir.
Q. How many guns were in this bull pen?
A. Oh, there was a hundred or more I guess.
Q. Were you given a gun?
A. No, sir, I was offered one, but I didn't want it.
Q. Did you have a gun on the day of the battle?
A. No, sir, they offered me one, but I didn't want it.
Q. State to the court and jury what the conditions were with reference to the presence, if it be so, of liquor in this camp? A. They had plenty of it.
Q. Was there a good deal of drinking going on?
A. All the time, yes, sir.
Q. Was there any gambling? A. Yes, sir.
Q. What kind of games were they playing?
A. Poker, craps, anything you wanted.
Q. Where was they being carried on?
A. In the bunk house, or anywhere you wanted it.
Q. Was there any quarreling or anything of that
3326 kind? A. Yes, sir.
Q. State generally the character of the nights that were spent there, with reference to whether or not they were quiet and peaceable or boisterous and disorderly?

A. I would call them rough and disorderly.
Q. Do you know Harry Dunlap?
A. Yes, sir, personally.
Q. And do you know Pat Malloy? A. Yes, sir.
Q. Did you have any conversation with them with reference to Frogtown?
A. I heard them say that they shot up Frogtown, several times.
Q. How long was that before the battle of the 17th?
A. Just a few nights, I don't know.
Q. What time did you leave the stockade?
A. I left about 12:00 o'clock on July 17th.
Q. Alone, or in a crowd of men?
A. In a crowd of men.
Q. Did they have any rifles with them? A. Yes, sir.
Q. What, if anything do you know about the guards or employees there getting whiskey at the train?
A. Yes, sir, they got it.
Q. Were you there with them when they went and got whiskey? A. No, sir, I never went with them.
Q. How do you know it? A. Saw them drinking.
3327 Q. When they came back from the train would they have whiskey? A. Yes, sir.
Q. Do you know what time the shooting commenced on the day of the big battle? A. No, sir, I don't.
Q. There was firing there?
A. There was firing there continually.
Q. About what time did you leave?
A. About 12 o'clock.
Q. Was there firing from the stockade as well as toward it? A. Yes, sir.
Q. Where were these guards and men with guns stationed and located?
A. They were behind the flat cars, and anything that they thought they could get behind.
Q. What kind of guns did they have there?
A. They had the high powered rifles.
Q. Did you see any holsters with weapons, carried in a pocket? A. Yes, sir, they had short guns to sell.
Q. Did they have the short guns for sale? A. Yes, sir.
Q. Whereabouts? A. At the commissary.
Q. That was the company store within the bull pen?
A. Yes, sir.

Cross Examination

By Mr. Drinker.

3328 Q. How old are you? A. Twenty-nine.

Q. You were met at the train when you went down there by the United States marshals, were you?

A. No, sir.

Q. They were not United States Marshals?

A. No, sir.

Q. How do you know? A. I know.

Q. There were United States marshals there at the time?

A. I never saw any.

Q. Are you sure there were no United States marshals down there? A. Pretty sure.

Q. You are pretty sure there were none down there?

A. Yes, sir.

Q. If there were any, are you sure they were not United States marshals that met you?

A. I am pretty sure they were not United States marshals.

Q. How do you know they were not?

A. I am just pretty sure.

Q. Who told you they were not? A. Nobody.

Q. Nobody told you before or since that they were not?

A. They were carrying rifles, the guards that were down there.

Q. Did they say that they were not United States marshals? A. No, sir.

3329 Q. Did you hear them say they were or were not?

A. No, sir, I didn't hear them say they were.

Q. You could get plenty of whiskey up in Frogtown?

A. I got plenty in the bull pen.

Q. Who did you get it from?

A. First one guard and another.

Q. What are you doing now? A. Farming.

Q. Where? A. At Coal Hill, Arkansas.

Q. Did you hear some shots out there one night or two nights before the battle?

A. I heard them all the time, day and night.

Q. Over in Frogtown? A. I don't know that I did.

Q. Did you hear some shots in Frogtown when you were sitting there with Harry Dunlap and Pat Malloy one evening?

A. No, sir.

Q. Did you hear some shots go off and did they say, "Now, we will get blamed for that"?

A. I heard them talk several times about being in a bunch shooting up Frogtown.

Q. When was that? A. Just before.

Q. Just before the battle? A. Yes, sir.

Mr. Drinker: That is all.

3330 The Court: Stand down.

(Witness excused).

The Court: Gentlemen of the jury, under the admonition I have given you you will please pass out and return at 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock P. M.)

3331 After Recess. 2:00 P. M.

The Court: Proceed with the trial.

Mr. Warrum: I will read the testimony of W. J. JENKINS, who testified in behalf of defendants on the former trial, beginning on page 2649 of the old record. (Reading)

Direct Examination.

By Mr. Covington:

"Q. State your name, please, to the court and jury?

A. W. J. Jenkins.

Q. Where do you live, Mr. Jenkins?

A. At St. Louis, Missouri.

Q. How long have you lived in St Louis?

A. Since 1903.

Q. What is your occupation?

A. Vice President and General Manager of the Consolidated Coal Company of St. Louis.

Q. Where does that company operate its mines?

A. Entirely in the state of Illinois.

Q. When did you go with that corporation?

A. I think it was about four years ago. I would not be positive as to the exact date.

Q. With what companies were you connected prior to that time?

A. From 1903 to May 1st, 1917, I was also connected with the Western Coal & Mining Company in various capacities.

Q. Where did the Western Coal & Mining Company operate coal mines?

3332 A. That company operated in the states of Missouri, Kansas, Arkansas and Oklahoma during that period.

Q. In four states?

A. Yes, during the period I just referred to, from 1903 to May 1st, 1917.

Q. Did you hold any position with the Missouri Pacific Railway, or what is known as the Iron Mountain, during that period?

A. I was for quite a period of time assistant fuel agent of the Missouri Pacific, Iron Mountain System, and later on was also fuel agent of the same system.

Q. Who did you succeed in that position?

A. Mr. B. F. Bush.

Q. Who is now the President of the Missouri Pacific Railway Company? A. Yes, sir.

Q. Mr. Jenkins, during the period you have referred to, were your coal companies at any time members of what is known as the Southwestern Interstate Coal Operator's Association, I mean the Western Coal & Mining Company?

A. The Western Coal & Mining Company was a member and, to the best of my knowledge, is a member at the present time of the Southwestern Interstate Coal Operators' Association.

Q. Were they [mambers] from the organization of that Association? A. They were.

Q. And have been at all times since?

3333 A. To the best of my knowledge they have.

Q. When was the Southwestern Coal Operators' Association organized.

A. During the year of 1903 at Pittsburg, Kansas.

Q. 1903? A. Yes, sir.

Q. That was the second year in which the miners and operators had held a conference, was it not, looking to the negotiation of contracts?

A. I cannot state positively as to that because I came down here during the year 1903.

Q. Were you in the Pittsburg Conference in 1903?

A. In the organization of the Operators' Association? Yes, sir.

Q. Was Mr. Bush also in that conference?

A. He was not present at the organizaton. He was present at the wage scale conference. Mr. Bush was in the East at the time of the organization.

Q. How many conferences have you attended as a delegate or representative of your coal companies since the organization of the Association in 1903?

A. I am unable to state definitely, but off and on practically all of the time.

Q. Did you at any of those conferences meet Mr. Franklin

Bache, the President of the plaintiffs companies here?
3334 A. Numerous times.

Q. Mr. Jenkins, in either of the conferences, from 1903 up to 1914, did the operators in those conferences have any agreement or contract or understanding with the miners' organization by which its members were to go out and through force and violence, or by any other method, obstruct interstate commerce in non-union coal?

A. To the best of my knowledge they did not at any time.

Q. Did they ever at any time, in either of the conferences have any contract, agreement or understanding of any kind or character whatever by which the miners in consideration of the coal operators operating their properties with union labor were to go out and commit murder or arson in order to get rid of the means of producing non-union coal, and keep it off the market in competition with union coal? A. No, sir.

Q. Was there any such thing ever discussed?

A. There was not.

Q. Were you a member of the conference in 1910 at Kansas City?

A. I believe I was, I am pretty sure that I was.

Q. Was Mr. Franklin Bache in attendance on that conference at any time during that period as a representative of the plaintiff companies here? A. He was.

Q. Mr. Jenkins, is it not a fact that the operators at
3335 Kansas City during the conference of 1910, in which conference Mr. Bache participated, made an agreement to appropriate so many hundred thousands of dollars to carry on a campaign in opposition to the miners? Is it a fact or not? A. I did not get that question.

Q. Mr. Jenkins, are your coal companies members of the Illinois Coal Operators Association?

A. They are members of the Illinois Coal Operators' Association at the present time and also of what is known as the Fifth and Ninth District Coal Operators' Associations.

Q. Of what is the Fifth and Ninth Districts composed?

A. They are in the state of Illinois also. There are three associations in that state.

Q. Have you ever attended any of the conferences of the central competitive field? A. I have, yes, sir.

Q. What conferences were you in, in the central competitive field? What years?

A. [In] was in the last,—since I have been connected with the Consolidated Coal Company.

Q. You were not a member or delegate to the conferences before 1914? A. No, sir.

Mr. Covington: That is all."

3336 Mr. Lucas: We offer the cross examination without reading it.

The Court: Very well.

(The cross examination of the witness in the words and figures following, to-wit):

Cross Examination.

By Mr. McDonough:

"Q. What are your initials? A. W. J.

Q. Where is Mr. Bush now?

A. He was in St. Louis yesterday.

Mr. McDonough: That is all."

3337 Mr. Warrum: I will read the testimony of W. H. COULTER, who testified in behalf of the defendants on the former trial beginning on page 2529 of the old record. (Reading).

Direct Examination.

By Mr. Covington:

"Q. State your name? A. W. H. Coulter.

Q. Where do you live, Mr. Coulter.

A. Fort Smith, Arkansas.

Q. What is your occupation?

A. I am a brakeman on the Midland Valley.

Q. How long have you been in the railroad business?

A. I have been with Midland Valley for twelve years.

Q. Were you working for the Midland Valley in 1914?

A. Yes, sir.

Q. In what capacity? A. Brakeman.

Q. On what train?

A. On what they called the "polly", that runs between Hartford and Fort Smith, it made a round trip a day.

Q. Was that a mixed train of passengers and freight?

A. Yes, sir.

Q. Were you on that run during the months of April, May, June and July of 1914?

A. Yes, sir,—well, I was off a few days in the month
3338 of April and off also in the month of July.

Q. What time of July?

A. It was along about the middle of July I was off on account of a death in my wife's family.

Q. During this period of April, I believe it was, did you have on the train on which you were then working some parties on their way to Prairie Creek?

A. Yes, sir, we had on the train at several times parties from here to Prairie Creek.

Q. Do you remember of one man being cursed by Slankard on the train?

A. Yes, sir, I remember of hearing of it, but I did not see it.

Q. You did not see that? A. No, sir.

Q. Were you present at Prairie Creek when the sack of chops was alleged to have been cut by Sandy Robinson?

A. Yes, sir.

Q. Tell how that was.

A. Well, we had about half a carload of stuff for Prairie Creek that evening, chops, bacon and household goods and pretty near everything you could think of. The freight and the chops were taken off and piled up off at one side and there was some big boxes unloaded containing goods of some kind, and a lot of household goods, and they let the boxes on the ground and one of them was rolled over on the
3339 sack of chops where the sack of chops had rolled out on to the ground.

Q. Do you know Sandy Robinson? A. Yes, sir.

Q. Did he cut the sack of chops?

A. No, sir, he did not.

Q. Who else was present that you recall? Was the conductor present?

A. Yes, sir, the conductor was on the train.

Q. Who was the conductor on the train?

A. Mr. Harrison was conductor at that time.

Q. Were you in the train when some difficulty is alleged to have occurred between Clint Burris and some parties in there, and it is claimed they [hald] a base ball bat over the head of a fellow by the name of Boraski?

A. No, I was out of the car at No. 4 mine at the road crossing unloading freight at that time.

Q. Were you in the coach where Burris and Robinson and Manick and these other parties were that evening, from Midland over to Prairie Creek?

A. Yes, sir, I came through the car.

Q. Tell whether either Burris or Manick or Robinson abused or cursed those fellows, or said anything to them.

A. No, sir, not while I was in there. I did not hear them say a word to them.

Q. How far is it from Midland over to Prairie Creek?
3340 A. Three miles.

Q. How much of the time were you in the coach, that you recall? I believe you testified in this case once before.

A. Yes, sir, I was not in there very long because I had the freight to unload and I had to go to the head of the car to get the bills to check the freight off and of course I did not go in there when they stopped because I was not at the station.

Q. You had ladies on that train did you? A. Yes, sir.

Q. I will ask you when you reached the station of Prairie Creek if there was anyone out there with guns? A. Yes, sir.

Q. What were they saying?

A. There was several standing around there with Winchesters.

Q. Did you know who they were?

A. No, sir, I don't know any of their names.

Q. Have you seen any of them since?

A. I don't know whether I have or not, if I did I didn't know them.

Q. What were they doing there?

A. Well, they generally came up there in the wagon that came up after the goods that was shipped there to the men there at the mines. There were three or four of them would ride up in the wagon and stand around on the platform with Winchesters in their hands.

3341 Q. On this particular occasion were they using any kind of abusive language?

A. Yes, they were cursing and going on outside on the platform.

Q. At this same station, at the same time, did you see anyone draw a gun on a man there? A. Yes, sir.

Q. Now, who was that, do you know?

A. Well, he was one of the guards; he claimed to be a guard. He had a Winchester and he threw it on Sandy Robinson.

Q. He threw it on Sandy Robinson? A. Yes.

Q. What was Sandy doing at the time that you noticed?

A. He was standing kind of between that little building that is used for a room in time of rain. It is not a depot.

Q. It is just a shed?

A. Yes, sir, just a shed. Sandy was standing back there and there was a lot of little boys around there talking and jeering and going on and this fellow grabbed his gun and said, "You son-of-a-bitch, I will take a shot at you." He said that to Sandy, and Sandy said, "Shoot you-son-of-a-bitch, you haven't got nerve enough to shoot."

Mr. Lucas: (Reading).

Cross Examination.

"Q. You were a witness in the contempt proceedings, Mr. Coulter?

3342 A. Yes, I was a witness here.

Q. In this court? A. Yes, sir.

Q. And you testified the same then that you did now?

A. Yes, sir, I think so, the best I can remember.

Q. You knew Sandy Robinson, did you? A. Yes.

Q. How long have you known him?

A. I have known Sandy Robinson ever since he was a little boy.

Q. You and he were friends.

A. Not any more friends than any body else with him.

Q. What is your age? A. I am 50 years old.

Q. Did you know Clint Burris? A. Yes.

Q. About what aged man was he?

A. I don't know his age, I suppose he is 35 or 40 years old.

Q. You saw them with base ball bats, did you?

A. Yes, sir, I seen them.

Q. When was that?

A. I don't know what date it was, I don't remember the date.

Q. About what time was it?

A. It was some time in July, I think it was.

Q. Of 1914? A. Yes, sir, somewhere along there.

3343 Q. That was at Midland?

A. Yes, they got on the train at Midland. They were at Huntington or somewhere playing ball.

Q. They got on at Huntington, did they?

A. No, at Midland.

Q. And where did they get off?

A. At Prairie Creek.

Q. They only traveled two or three miles?

A. Three miles is what it is called.

Q. You heard no conversation between them and anybody that was on the train? A. No, sir.

Q. That you now remember? A. No, sir.

Q. You were not in the car they were in all of the time they were going over there? A. Yes, sir.

Q. Do you know whether they had been over to Mansfield or Huntington?

A. I don't know where they had been.

Q. Where did Manick get on the train?

A. At the same place they did, I think.

Q. Where? A. At Midland, as far as I know.
3344 Q. Where did he get off?
A. He got off at Prairie Creek.
Q. Was there any profane language used there at that time, at the time they had their bats, to your knowledge, in your presence or hearing?
A. Whereabouts, up at the station?
Q. On the train or at the station?
A. There was some used down at No. 4 Mine where we stopped at the crossing to unload the freight.
Q. At Prairie Creek? A. This side of Prairie Creek.
Q. Was that the day the freight was unloaded?
A. That is the day some of it was unloaded.
Q. The day they had ball bats?
A. Yes, sir, I think that is the day they unloaded the freight at No. 4 crossing.
Q. That is the chops you spoke about?
A. No, they were unloading at the station after that or before, I have forgot which.
Q. Was Sandy Robinson there when you unloaded the chops? A. Yes, sir, at the station.
Q. After you unloaded and got through with your work, you went on? A. Yes, sir, we did not stay there.
Q. Part of the time you were there you were in the
3345 back of the car unloading freight?
A. Yes, part of the time, and part of the time on the platform.
Q. You were busily engaged in your duties there practically all of the time you were there? A. Yes.
Q. And soon as you got through with those duties the train went on?
A. Yes, sir, as soon as I got through unloading freight.
Q. Who was that conductor? A. Mr. Harrison.
Q. Is he still in the employ of the company? A. Yes, sir.
Q. Did you know a United States Marshal by the name of Schell? A. No, sir.
Q. Was there a United States Marshal along there?
A. I could not tell you.
Q. You do not remember of seeing one at all?
A. I seen men with guns, but I don't know whether they were marshals or not, or what their names was."

Witness excused.

3346 Mr. Warrum: I will read the testimony of Miss Ella Howard, who testified in behalf of defendants on the former trial, beginning on page 2578 of the old record. (Reading):

"Direct Examination

By Mr. Grant:

Q. State your name. A. Ella Howard.

Q. Where do you live? A. Prairie Creek.

Q. How old are you? A. 16.

Q. Where were you living in 1914?

A. At Prairie Creek.

Q. Did you go to school down there in 1914? A. Yes.

Q. Where did you attend school?

A. No. 4 Prairie Creek.

Q. At Prairie Creek School House at Mine No. 4?

A. Yes, sir.

Q. Did you at any time on your way to school have any trouble or be interrupted by anyone with a gun at any time?

A. Yes.

Q. About when was that? A. In March.

Q. Was it in March or April? A. In March.

Q. About what time in March, do you remember the
3347 date? A. No, sir, I don't remember the date.

Q. Was it before or after the guards had been put out at the Bache-Denman property near the school house?

A. Before.

Q. Did you go to school there in April? A. Yes, sir.

Q. Did you go to school in company with Miss Jessie Thompson and your brother Howard? A. Yes, sir.

Q. Had the guards been put out at the Bache-Denman property? A. No, sir.

Q. Did you attend school there at any time after they were put out there? A. Yes, sir.

Q. When was that?

A. It was in the winter school, the winter afterwards.

Q. You never went to school in the spring,—in April, 1914, then?

A. Yes, sir, I went in 1914. School was out the 17th of April.

Q. Did you attend school from the first of April until school closed? A. Yes, sir.

Q. Tell the court and jury what, if anything, was said or done by any non-union people working there in connection with the Bache-Denman property, those guards? . . .

Q. During the time from the first day of April until the 7th day of April, until your school closed.

3348 A. We were going to school one morning in April before school was out.

Q. Speak out a little louder so the jury can hear you.

A. We were going to school and two or these men passed in a wagon and both of them had guns and me and my

sister was about 100 yards ahead of my brother and they drew their guns on us, and my brother ordered them to put the guns up.

Q. What did they say when they drew their guns on you?

A. They said they would shoot us.

Q. Were you present with Teresa del Rosa, another little girl at any time when improper proposals were made to you?

A. Yes, sir.

Q. When was that? A. Along the last of March.

Q. The last of March? A. Yes, sir.

Q. Who was it that made those improper proposals to you, if you know? A. Well, it was some non-union men.

Q. Some of the men there guarding the Bache-Denman properties? A. Yes, sir.

Q. What place did this happen, at Prairie Creek No. 4 school house? A. Yes, sir.

Q. That is right across from the Bach-Denman property?

A. Yes, sir.

Q. Now, what was it that they said to you, if you know.

3349 A. Well, her and I went up to the toilet and they asked us to come up on the hill and offered us $2.00 and threatened to shoot us if we didn't.

Q. How is that?

A. We went up to the toilet and they offered us $2.00 and told us to come up on the hill and threatened to shoot us if we didn't.

Q. Who was with you at the time they did that?

A. Teresa del Rosa.

Q. What did you girls do then?

A. We went back to the school house.

Q. Did you report it to the teacher? A. No, sir.

Q. After that time,—did you report it at home when you got home, what happened? A. No, sir.

Q. About that time, in May, do you know anything about any shooting from the camp there where the Bache-Denman people were employed, around No. 4, and the bullets falling around you anywhere?

A. Well I was going to the store [on] day there was a bullet fell around me there, when I was coming from the store."

Mr. McDonough (reading): "Cross Examination.

By Mr. McDonough:

Q. What time was that, the time of the bullet falling?

A. Sir?

Q. What time was that? A. It was in the morning.
3350 Q. What month was it?
A. I don't remember just what month it was, but it was when we were over at No. 4.
Q. Was it near the school house? A. Yes, sir.
Q. Where did you live from the school house, where did your father live?
A. We lived one side of the school house.
Q. And you were on your way to the school house to your home?
A. I was on the way from the store over to my home.
Q. Do you know how far it is from your home to the school house? A. It is not very far.
Q. How long did it take you to walk it?
A. About five minutes.
Q. And you think you heard some bullets falling while you were making that trip, do you? A. Yes, sir.
Q. Can you give us any better idea than what you have already done as to the time when those bullets fell, what month it was? A. No, sir, I can't.
Q. You could not locate that? A. No, sir.
Q. Was it before or after the meeting at the school house on April 6th, do you remember about that meeting?
A. Yes, sir.
Q. Was it before or after that? A. It was after.
3351 Q. About how long afterwards?
A. Well, I don't remember just how long it was after.
Q. Your father,—what are his initials? What is his first name? A. J. W. Howard, John W.
Q. Is he a member of the union there? A. Yes.
Q. He lived there at that time? A. Yes, sir.
Q. And he lives there now? A. Yes, sir.
Q. Now at the time that you state that these men spoke to you where was that, Miss Howard?
A. Between my house and the school house.
Q. What time in the day was that?
A. In the morning.
Q. You did not know the men at all? A. No, sir.
Q. You did not know who they were? A. No, sir.
Q. You had never seen them before?
A. No, sir,—yes, sir, I had seen them before going in and out of the camp.
Q. What is that?
A. I had seen them going in and out of the camp.
Q. At the camp? A. Yes, sir.

Q. You reported that when you got home, did you?
3352 A. No, sir.
Q. Did you report it to your teacher? A. No, sir.
Q. You did not report that to anyone? A. No, sir.
Q. You first stated—you said something about March, something that happened to you in March; what was that, when you first went on the stand a while ago?
A. In March?
Q. Yes, in March, when you first went on the stand a while ago. Do you remember what that was?
A. That was me and the girl.

A Juror: You will have to talk a little louder, we can not hear you.

Q. Was this improper proposal you are speaking about in March?
A. As well as I remember it was along the last of March."

Mr. Warrum: I will read the testimony of Miss Elberta Johnson, who testified in behalf of defendants on the former trial, beginning on page 2584 of the old record. (Reading):

"Direct Examination

By Mr. Grant:
Q. Your name is Elberta Johnson? A. Yes, sir.
Q. Where do you live, Miss Elberta? A. Prairie Creek.
Q. How long have you lived there? A. 15 years.
3353 Q. You were reared there, were you?
A. No, sir, I have been raised there, I was born in Little Rock.
Q. Did you attend school at the Prairie Creek school house after the men had been put around Mr. Bache's mines,—after Mr. Bache's mines had guards put around them there?
A. Yes, sir.
Q. You may state to the court and jury whether or not you were ever at any time insulted by any of the people who were working there, after the 1st of April, the men in charge of the property?
A. Why, I was insulted two or three times by the scabs that worked there at the Bache-Denman mines; that worked there.
Q. Now, in the latter part of April, were you hunting for a cow, and had some trouble there with them?
A. Well, that was just in front of the house, as I was going over the railroad, that Bailey—I forget his given name.
Q. Riley Bailey? A. Yes, sir.

Q. Now, you may tell the court what that trouble consisted of?

A. I started across to the railroad track after the cow, and the dog run in front of me, and I said, 'Get out of the way, I will knock your head off,' and he just got off of the train, and he said, 'Yes, you will, you little freckled face slut.'

Q. That was Riley Bailey? A. Yes, sir.

Q. He was one of the guards working there? A. Yes, sir.

Q. Did he have a gun when he made that remark?

3354 A. No, sir, not that I remember, but I see him with a gun afterwards.

Q. You saw him with a gun afterwards? A. Yes, sir.

Q. Now, one time in July when you went to pick berries, or were hunting for a cow, or something like that, did you have any trouble with any of the employes of the Bache-Denman property?

A. One evening I went down for the cow, and took a pail with me to pick berries, to pick some blackberries, and the cow got inside of the rope, they just had one rope there, and there was a boy, I believe they called him Slim, and I asked him if I could go in there, and he insulted me, and he wouldn't let me go in unless I did what he wanted me to, and I let the cow stay and I came home.

Q. Was he carrying a gun at that time?

A. Yes, sir, he had a gun and a whole lot of [sheels] around him.

Q. You have seen him going in and out of the property there?

A. Yes, sir, he told me he was a guard, and he talked to me a good while.

Q. Now on another occasion from school, did you meet some of the employes of the Bache-Denman property along about the same time that you have been talking about?

A. Yes, sir, I met two walking one on a horse.

Q. Did they say or do anything to you then?

A. Yes, sir.

Q. What was it?

A. They cursed us and also insulted us and told us

3355 to come up there on the hill.

Q. Did they say bad or use bad words?

A. Yes, sir, awful bad words, just as bad as anybody could.

Q. What did you girls say to that?

A. I didn't say nothing to them, I said, 'I will tell Will on you,' and they said, 'Yes, we will fix your brother Will, and put things to you, too.'

Q. That is what they said?
A. That is what they said to me.
Q. Did you know that the people that were doing this talking were the people that worked [an] the Bache-Denman property? A. They stayed in that bull pen.
Q. You saw them going in and out?
A. Yes, sir, all three had guns.
Q. About what time in 1914 did this happen?
A. We were going to school then.
Q. That was in April?
A. Yes, sir, before the 17th of April.
Q. School closed on the 17th of April, 1914?
A. Yes, sir.
Q. Now, then, do you know any other time when they insulted you, when you were with Miss Jessie Howard and Miss Thompson? A. Yes, sir.
Q. When was that?
A. It was when school was going on, before the 17th of April, before school was out that we were up at the toilet.
Q. Up at the toilet? A. Yes, sir.
3356 Q. And what took place, what did they say or do?
A. They insulted us, and just being plain about it, they taken their pants off, or half way off there, and offered us money.
Q. And who was it doing that?
A. It was some of those scabs, I don't know who it was.
Q. Did you see them going in and out of the Bache property? A. Yes, sir, I seen them.
Q. Did they have guns with them out there?
A. Yes, sir, they did.
Q. And at any other time than at the same toilet, did you have any trouble with them?
A. Yes, sir, once afterward.
Q. When was that, what did the trouble consist of?
A. I think that was the following week, the latter part of the week, with just one man; there was just one man on a horse, and there were two or three of us girls up there, and he did just about the same way, he insulted us and offered us money.
Q. They were men that you knew to be employed there?
A. I knew them to be Bache-Denman employes.
Q. Had you seen them going in and out?
A. Yes, sir, I had.
Q. Did you have guns?

A. Yes, sir, and I would see them when I would go home from school that evening, I would see them going to the depot with guns on their shoulders.

Q. Do you know the name of the man [or] horseback?

3357 A. I didn't know their names.

Q. Were there any other occasions that you girls were insulted by these people from the Bache-Denman property?

A. Out back of the school house, where we used to jump off of the bank, there was a little branch there, and down into the sand, we were insulted several times out there, at different times.

Q. In what manner?

A. Oh, they just insulted us, and would not all the time offer us money, but once in a while they would.

Q. Would they use bad language?

A. Yes, sir, they used bad language, and they would cuss, they would cuss awful.

Q. They throw anything at you, rocks or anything of that kind? A. That called us—I ain't a going to say what.

Q. Called you bad names? A. Yes, sir, they did.

Q. Were you at home, at your home, when any of the Bache-Denman employes, after April 1st, 1914, cursed one of your sister's children? A. Yes, sir.

Q. Now, tell the court and jury about that.

A. They had put a two-by-four or something out in the road, and they got out there, and they would come up in a wagon to meet the train, to get something from the train, and they picked that up and throwed it over, and throwed it at the children, and came close, came almost hitting one of them, and my sister said, 'Hey, there, you like to hit that kid,' and he said, 'I wouldn't give a God damn if I

3358 killed every union son-of-a-bitch's kid in this country,' or something like that.

Q. That was the men working there at the Bache-Denman property? A. Yes, sir.

Q. Did that man have a gun that made that statement?

A. Yes, sir, there were two or three of them, at night, and they all had guns.

Q. How far did you live from the Prairie Creek station, where the people got off of the train at Prairie Creek?

A. About as far as from here over that other court house, I reckon.

Q. About 200 feet, from it, would you say?

A. About that far, I guess.

Q. Did you see people going from the Prairie Creek school house away from the depot at Prairie Creek, to the stockade at the Bache-Denman property?

A. Yes, sir, we lived between the school house and No. 4 mine, and they would go right along in front of our house down to the mine.

Q. State how they traveled, were they armed or not?

A. Yes, sir, they would go up there, the guards would go up and meet the men that were coming in with guns; they would go by our house cussing and using all kinds of bad language.

Q. How long did that course of conduct last?

A. For a long time, as long as they stayed there, until the 17th of July.

Q. Until the 17th of July? A. Yes, sir."

3359 Mr. Lucas (reading): "Cross Examination.

By Mr. McDonough:

Q. Were you there the 17th of July? A. No, sir.

Q. Where were you?

A. Until the morning of the 17th of July, I got up and I went over—I told mamma, we had taken mamma off several times when we heard there would be trouble, and we would have to take her in a wagon off over the hill; she was sick, she had the dropsy and couldn't walk, and that morning it made her sick, a whole lot worse, and she came almost dying; and she said, 'I don't think I can stand to go over there,' and she said, 'I will stay here if they do kill me,' and she stayed, she went in the cellar, and I went over to Jim Kenafers, over the mountain.

Q. Where?

A. Jim Kenafers, over on Sugar Loaf Mountain.

Q. Had you taken your mother away before the 17th of July? A. Yes, sir.

Q. The day before?

A. I don't know whether the day before or not.

Q. You heard there was going to be trouble?

A. Yes, sir.

Q. Was your father there?

A. My father and mother had been separated since I was six years old, he was in Arizona.

Q. He was not there?

3360 A. No, sir.

Q. Was there anyone of your family engaged in coal mining, working in the mines? A. I had two brothers.

Q. Were they there?

A. Yes, sir, they were both there that morning.

Q. What were their names?

A. Charley Johnson and Bill Johnson.

Q. Where were they working at that time, if anywhere?
A. They were not working anywhere.
Q. Were they members of the union? A. Yes, sir.
Q. Living at home? A. Yes, sir.
Q. What were the ages of those brothers?
Q. Well, one was 17, then, the youngest one, and the other one must have been 20 or 21, I don't know which.
Q. What is [our] age now?
A. I am 16 years old; I will be 16 the 1st of April.
Q. The 1st of next April? A. Yes, sir.
Q. Then how many years ago was that?
A. When? What?
Q. These things that you have been talking about?
A. Three years ago, 1914.
Q. You were then 12 years old? A. Yes, sir.
3361 Q. Now, when did these difficulties first begin?
A. Well, along about the 1st of April.
Q. None of them before that time?
A. Well, whenever,—they never come, I don't believe, I may be mistaken, but when they got to acting so smart, and like that place belonged to them, it must have been along about the 6th of April.
Q. You mean the scabs acted like the place belonged to them?
A. Yes, sir, or just before the 6th of April, when there were so many people [fathered] down there.
Q. They began along in April to act like the place belonged to them? A. Yes, sir.
Q. And then it was that these things occurred that you have described? A. Yes, sir.
Q. Your two brothers lived there during all of April, did they?
A. Well, no—both of them went off to get a job of work to see if they could get work some place.
Q. They had been working at Mine No. 4 before that?
A. Yes, sir.
Q. Both of them?
A. What time it worked, it didn't work much.
Q. While it did work under union conditions they worked there?
A. Yes, sir, they worked there when it did work.
Q. Was any one of your brothers known as Blue Johnson?

A. Yes, sir.
3362 Q. Which one is that, the older one?
A. The younger one.
Q. He was the one that was 17 at that time?
A. Yes, sir.
Q. Where is he now?
A. Oh, he is over here in jail.
Q. Where? A. He is over here in jail.
Q. In the city of Ft. Smith? A. Yes, sir.
Q. Where is the other brother?
A. He is at home, Prairie Creek.
Q. Down in Midland? A. Yes, sir, Prairie Creek.
Q. Who was your teacher that was teaching school at that time? A. Walter McCord.
Q. Do you know of any of the officers that lived there in that neighborhood at that time? A. The officers?
Q. The officers. You know what I mean by officers?
A. Jim Slankard, he was an officer, and I think John Davis was.
Q. Do you know Mr. Fitzgerald? A. Yes, sir.
Q. He was an officer? A. Yes, sir.
Q. He lived there right close?
A. He lived in Midland, I believe.
3363 Q. How far did he live from where you lived?
A. Three miles, or two and three-quarters.
Q. How far did you live from the Prairie Creek school house? A. About a quarter of a mile.
Q. Which direction, toward Hartford?
A. Yes, sir, toward Hartford.
Q. And you live in Prairie Creek?
A. Yes, sir, I live right in Prairie Creek.
Q. Did Mr. Fitzgerald live in that neighborhood?
A. He lived in Midland, and I lived at Prairie Creek No. 4.
Q. Did any justice of the peace or constable live at Prairie Creek where you lived? A. None that I know of.
Q. You don't know whether they did or not?
A. Mr. Evans is justice of the peace now, but I don't think they had one before.
Q. You made a report of these matters to your brothers, did you? A. Yes, sir.
Q. As each one occurred you stated it to your brothers?
A. Yes, sir.
Q. As soon as you saw them? A. No, sir.
Q. Now, I will ask you again if you remained there at home yourself all day on the 17th, the day of the battle?

A. I told you I went over the hill to Jim Kenafers.
Q. How far away was that?
A. It was over the mountain, it must have been two
3364 or three miles.
Q. Toward Hartford?
A. It was over on Sugar Loaf Mountain, right over in front of our house.
Q. You went over there to get away from the battle?
A. I went over there to get away from the battle, I was feared I would get shot.
Q. You heard it was coming off?
A. I heard it that morning, but I didn't much believe it until I heard the shooting down there at the bull pen.
Q. You left after you heard the shooting?
A. Yes, sir, I heard four or five shots, and I run, and took my sister's baby and she stayed with my mother.
Q. That was all the shots that you heard?
A. The further I went the more shooting I heard.
Q. Do you know John T. W. Davis? A. Yes, sir.
Q. He lived over at Prairie Creek at that time?
A. Yes, sir.
Q. He was an officer?
A. Yes, sir, I said Mr. Davis a while ago.
Q. How is that?
A. I said Dr. Davis was an officer a while ago.

3365 Mrs. Pearl Berger, of lawful age, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. What is your name? A. Mrs. Pearl Berger.
Q. Where do you live? A. Ft. Smith.
Q. Are you a married woman? A. Yes, sir.
Q. How many children have you? A. Five.
Q. Were you married in 1914? A. No.
Q. Have you a brother named Kelly Brenn?
A. Yes, sir.
Q. What was he doing at the Bache-Denman mine in 1914? A. He was guarding.
Q. Kelly was your brother—

Mr. Drinker: I move to strike the answer out, he was guarding, as hearsay.

The Court: I suppose she knows.

Q. [(Br.] Mr. Drinker:) Were you down there?
A. I was a cook.
Q. (By Mr. Warrum) Did your brother Kelly get you to go down to the Bache-Denman mine to cook?
3366 A. Yes, sir.
Q. How long were you there?
A. I was there 5 or 6 weeks.
Q. Were you there up to the time of the big battle on July 17th?
A. No, sir, I left 3 weeks before that.
Q. You don't remember when you went there?
A. No, sir.
Q. How long were you there altogether?
A. I was there 5 or 6 weeks, all put together.
Q. What did you do and where did you stay?
A. There was a little log cabin over from No. 4 Prairie Creek, and I stayed there at nights and cooked during the day.
Q. You lived with a miner and his wife? A. Yes, sir.
Q. That worked at the Bache-Denman mines?
A. Yes, sir.
Q. And cooked? A. Yes, sir.
Q. Were there a good many armed guards there?
A. Yes, sir, three or four hundred, I couldn't be positive which.
Q. How many people [to] you think were there altogether in this enclosure?
A. I aint sure, but there was three or four hundred.
Q. Who did you cook for, the guards?
A. I cooked for them all.
Q. You cooked for them all? A. Yes, sir.
3367 Q. Was there much shooting done around the stockade? A. All the time.
Q. Was there any drinking going on that you know of?
A. I seen lots of it.
Q. Was there any gambling down there? A. Yes, sir.
Q. Where was the gambling? A. On the ground.
Q. How did they gamble on the ground?
A. I can't tell you.
Q. Did [the] shoot dice?
A. Yes, sir; that is what it was.
Q. Shooting craps, is that what they call it?
A. Yes, sir.
Q. Did you ever hear a conversation among the guards with reference to bringing whisky into camp from Ft. Smith?
A. Yes, sir.

Q. Once, or often?
A. I have heard it more than once.
Q. Did you ever see any strange women that were in there for a few days at a time? A. Yes, sir.
Q. Do you know where they came from? A. No, sir.
Q. Were you ever insulted by any of the guards?
A. Yes, sir.
Q. And you left shortly after that?
3368 A. Yes, sir.

Cross Examination

By Mr. Drinker:
Q. When did you leave?
A. Six weeks after I was there.
Q. And when was that? A. In 1914.
Q. I know, but what month did you leave, how soon after the big battle? A. In May.
Q. And you were down there from April until May?
A. Yes, sir.
[—]. It was after the first big riot—there were no men down there for a while after that? A. I was not there.
Q. When did you go back again?
A. When they came after me to go back to go to cooking.
Q. That was about the 9th of April? A. Yes, sir.
Q. And about two weeks after the riot they came back again? A. Yes, sir.
Q. And were there about ten days and got scared off again? A. I was not there.
Q. Were you there from the 9th of April on for a while? I am trying to find out when you were there, I am not trying to trap you or trick you? A. I was not there at first.
3369 Q. At first they were run off, and you were not there then? A. No, sir.
Q. And they were away about two weeks, and then went down again? A. Yes, sir.
Q. And were you there for six weeks after that?
A. Yes, sir.
Q. Was there a time for about ten days after you got there that they all went off again and stayed for about ten days?
A. No, sir.
Q. When they got the injunction, don't you remember that? A. No, sir.
Q. Did most of these men go away about the first of May?
A. I heard them talking about it, but I don't know whether they went.
Q. You heard them talking about being subpoenaed to go to Hartford, and they were afraid to go there, and went to Ft. Smith? A. Yes, sir.

Q. And in about ten days after they came back, and said they had an injunction to protect them? A. I don't know.
Q. You don't know about that? A. No, sir.

Mr. Drinker: May I suggest there is not the slightest evidence in the record that there was a stockade down there.

Mr. Warrum: We will call it a bull pen, if you wish, your own guards called it that.

The Court: The jury and the court and everybody
3370 else knows just what it was.

(Witness Excused.)

RENZEY HOLLOWESS, of lawful age, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. State your name to the court. A. Renzey Hollowell.
Q. Where do you live? A. Denning, Arkansas.
Q. What is your business? A. Coal mining.
Q. How long have you been a coal miner?
A. About 23 years.
Q. Did you work at the Bache-Denman mine, and were you employed there at all in 1914?
A. I was employed as guard there.
Q. When did you go down there?
A. At first, some time in June, and the second time about the 8th of July.
Q. How long did you stay when you went the first of June? A. About 4 or 5 days.
Q. And you went back to your home? A. Yes, sir.
Q. And shortly after that returned to Prairie Creek No. 4? A. Yes, sir.
3371 Q. How long did you stay over there?
A. Until the trouble started.
Q. Until the big battle? A. Yes, sir.
Q. You were there the day of the big battle? A. Yes, sir.
Q. Did you have a gun? A. Yes, sir.
Q. You were a guard? A. Yes, sir.
Q. I wish you would state to the court and jury what are the facts with reference to whether or not there was drinking in the camp, and whisky there?
A. Yes, sir, I got all I wanted, and I seen the rest getting all they wanted.
Q. Do you know where they got the whisky from?

A. Cooper Langford brought the whisky from Ft. Smith, and then we would go down and meet the train, and carry it over.

Q. You went down to where you got your supplies and got whisky, among other supplies? A. Yes, sir.

Q. Was there much drinking there?

A. Drinking all the time while I was there.

Q. Was there gambling there? A. Yes, sir.

Q. What were they doing in the way of gambling?

A. Playing anything, poker and everything, and they
3372 had a check-off game in a little house close to the tipple, and we played there, and paid a check-off to play.

Q. Somebody got the benefit of that check-off, some guard?

A. Yes, sir, some of the guards or officers.

Q. That is one place where they had a kitty, as they called it? A. Yes, sir.

Q. And the other places the men played among themselves? A. Yes, sir.

Q. Was there much shooting around there?

A. We had a little shooting scrape in a gambling house one night, but I left before that, nobody was hurt much, a few shots were fired.

Q. Any quarreling? A. Yes, sir.

Q. Any shooting around the stockade at nights?

A. On some occasions there was, yes, sir.

Q. What time did this battle begin on July 17th?

A. Well, the first shots I heard were along about midnight of the 16th.

Q. And it continued on until day break? A. Yes, sir.

Q. What time did you leave there?

A. I left there about 11 o'clock, I guess.

Q. Did you have a gun when you left? A. Yes, sir.

Q. Have you done some shooting yourself? A. Yes, sir.

Q. Where were the men on the inside of the enclosure?
3373 A. They were behind flat cars, and in the blacksmith shop behind sheet iron, and one fellow named Baskins had a rock wall built where he was guarding, and he was shooting from behind that place.

Q. They were shooting into the camp and out of the camp? A. Yes, sir.

Q. How many guns did you see there altogether?

A. I suppose about a hundred in the warehouse that night when I got mine; that evening before the battle. I was guarding night shift.

Q. You seen as many as how many?

A. A hundred high powered rifles.

Q. Did you see any short guns, as they call them here?
A. Yes, sir.
Q. Pistols? A. Yes sir.

Cross Examination

By Mr. Drinker:

Q. You say you were one of the guards? A. Yes, sir.
Q. What business are you in now? A. Coal mining.
Q. Are you a member of the union?
A. I am now, yes, sir.
Q. Were you before this time? A. Yes, sir.
Q. What local did you belong to?
3374 A. I belonged to 1840.
Q. Where? A. Denning, Arkansas.
Q. That was before 1914?
A. That was about a year before, at the time I first,—
Q. Where had you been working before this?
A. No. 2 Denning.
Q. And then you went over to mine coal over here?
A. I had not worked for about a year.
Q. You were a regular coal miner? A. Yes, sir.
Q. You were not a thug? A. No, sir.
Q. But you did guarding, did you? A. Yes, sir.
Q. You took your turn with the rest? A. Yes, sir.
Q. And one day one guard would be on duty and the next day another crowd? A. Yes, sir.
Q. How many guards on a night, at any one time, I mean?
A. Well, I figured there was about 15 on a shift; I was on the night shift.
Q. Not that many on the day shift, though?
A. I think there would be about the same bunch, I think.
Q. Why did they have so many men guarding at that time?
A. I don't know.
3375 Q. You have no idea?
A. No; I suppose they were just there to get the money.
Q. Just to amuse themselves—You think the company hired 15 men to be guards just for the fun of paying them the money? A. I don't know what the company's idea was.
Q. You don't know what these guards were guarding against?
A. No, sir. I think they claimed they were protecting the property, but I didn't see any reason to have guards there to protect the property.
Q. What were they protecting it from?
A. Well, while I was there I didn't see anything to protect it from.

Q. Was this man Baskins a one armed man? A. Yes, sir.
Q. Was he the fellow that got killed?
A. I don't know.

Redirect Examination

By Mr. Warrum:

Q. How many men were there altogether in the camp?
A. I would figure something like between 75 and 100.
Q. Were they digging coal?
A. The most I seen were carrying rifles, and some of them—
Q. They were not digging coal at all?
A. I never seen anybody digging coal.
Q. Did you know Harry Dunlap? A. Yes, sir.
Q. And Hughes Lovell? A. Yes, sir.
3376 Q. They were there, too? A. Yes, sir.
Q. Did you have a talk with them?
A. Yes, sir, I guarded with Lovell.
Q. Did you have a conversation with them before the big battle, with reference to shooting up Frogtown? A. Yes, sir.
Q. What did they say?
A. They wanted me to go over and help shoot up Frogtown, one night, and I told them I was not there to have no trouble, and the next day or two they were laughing and talking about what a hell of a time they had over there.
Q. Did they have a union hall at Frogtown? A. Yes, sir.
Q. This was just an ordinary mining camp? A. Yes, sir.
Q. A little collection of houses just like a mining camp?
A. Yes, sir.
Q. How many houses in Frogtown?
A. I was never over there very long, but quite a few.
Q. They had a community hall there? A. Yes, sir.
Q. That the union miners held meetings in? A. Yes, sir.
Q. And did they shoot into that hall?
A. They tried to get me to shoot into the hall one
3377 night when they were having a meeting, Harry and Hughes did.

Recross Examination

By Mr. Drinker:

Q. Did you see them shoot into Frogtown? A. No, sir.
Q. Did you see anybody else do it? A. No, sir.
Q. Would you have had the nerve to go over there and shoot a gun off in Frogtown with those union men over there? A. No, sir.

(Witness Excused.)

Mr. Warrum: Now, I have been deserted by local counsel, but I will read from the testimony of Dr. H. C. King, called as a witness on behalf of defendants in the former trial, found on page 2818 of the old record. Dr. King lives in this city, but last Saturday I spoke to Mr. McDonough, we met Dr. King, and he said he was going out of town for a couple of weeks, and he agreed that we could read it under the stipulation. Is that right?

Mr. McDonough: The agreement was that he was going out of town,—if he is here, I don't think that you should read it.

Mr. Drinker: Could we wait until Monday? I would rather have him here.

Mr. Warrum: Yes, I can wait if the court wishes.

Mr. McDonough: If he is present, we want him here, but if he is not in the city, it is all right.

The Court: Proceed with the reading.

3378 Mr. Warrum (reading):

"Direct Examination

By Mr. Covington:

Q. State your name. A. H. C. King.

Q. Your profession? A. Physician.

Q. Where do you live, doctor?

A. Fort Smith, Arkansas.

Q. Now long have you lived here? A. About 11 years.

Q. Were you in the Hartford Valley on the 17th day of July, 1914? A. I cannot tell you, sir.

Q. Were you there on the day on which they were said to have had a battle down there? A. Yes, sir.

Q. What were you doing down there, doctor?

A. At that time I was chief surgeon of the Midland Valley Railroad, and the claim agent came to Fort Smith, and they wanted me to get some pictures taken of a tipple down at Greenwood, where they had had an accident, so they got Mr. Redner, the photographer, and took my machine, and I took a mechanic along with me, and we went down to Greenwood to take some measurements, and take some pictures at the place of this accident, at this coal mine or shaft. After that was over, we heard that there was some trouble down about Prairie Creek, and we decided to drive over there.

Q. Did you find out where they were from?

3379 Q. Well, did you see any one on the road with guns?

A. We drove over to Prairie Creek mines, and the Midland Valley Railroad crew was in there with a switch

engine trying to get some cars out, and they had some teams there where they could not get to the cars, and they were pulling the cars out of danger of any fire, and we stayed there a few minutes, it was very late in the evening, and we started off home, and didn't see anybody or anything, and everything was perfectly peaceful at that time. On the way home, just before reaching Hackett City, it was dark, and we passed a crowd of fellows along the road, I didn't pay much attention to them, and we went on a mile or two further, near Hackett, and we met another crowd, and I stopped and talked to them and found out that they were armed, had arms with them, guns and revolvers, and they told us who they were and where they were going, and they were coming to Fort Smith. They were going to catch the train at Hackett City, and said they didn't want to go into Hackett City with any guns on them, so I volunteered to take their guns and ammunition into Fort Smith for them. So after we heard their story, we turned around and went back and met the other crowd, and told them what had happened, and they did likewise.

Q. They gave you their guns, too? A. Yes, sir.
Q. Did you find out where they were from? A. Yes, sir.
Q. Where?
A. They said they had been guards at the Prairie
3380 Creek Mine.
Q. How many guns did they turn over, if you remember?
A. I couldn't say positively, there must have been about thirty I judge.
Q. Rifles and high powered guns?
A. Rifles and revolvers and ammunition.
Q. How much ammunition did they have?
A. I don't know, there was a good sized box full.
Q. You brought them to Fort Smith, did you?
A. Yes, sir."

Mr. McDonough: We are trying to ascertain if Dr. King is in the city, and if he is we want to call him and examine him in person. With that understanding, we waive his cross examination, and if we don't find him we will read it in.

The Court: All right.

3381 JOHN P. WHITE, of lawful age, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. State your name to the court and jury.

A. John P. White.

Q. Where is your home, Mr. White?

A. Des Moines, Iowa.

Q. How long have you lived in Iowa? A. In Iowa?

Q. Yes. A. I lived in Iowa about 40 years.

Q. What are you doing now?

A. I am the referee for the miners and operators in southeastern Kentucky and Tennessee.

Q. You are the referee, that is a position that calls on you to referee and arbitrate difficulties?

A. Make final disposition of all grievances that may not find solution in their board.

Q. Were you ever a miner? A. Yes, sir.

Q. How long?

A. Well, I was a miner from the time I entered the mines at the age of 13, [unless] I was elected secretary-treasurer of the Iowa miners, at the age of about 27.

Q. Did you afterwards become an official of the International organization? A. Yes, sir.

3382 Q. In what year and what office?

A. Well, I first became an officer of the International in 1908, as vice president, and later on, in the year 1911, I became the president of the International organization, on April 1st.

Q. How long did you remain as president of the International organization?

A. I served in the capacity of International president from April 1st, 1911, to October 25th, 1917.

Q. Then as a delegate from the Iowa miners, or as an officer of the International organization, did you attend joint conferences in the Central Competitive Field between the operators and miners? A. Yes, sir.

Q. What was the purpose of those conferences?

A. The purpose of the joint conference was to follow the established practice of working out a basic wage scale that would govern for stated periods. That conference formed the basis of the mining rates and conditions in the entire country.

Q. And if these conferences were successful a contract would be entered into between the representatives of the union miners and the operators' association for a wage scale, for a fixed period, is that right? A. Yes, sir.

Q. Now, who was it that fixed the wage demands for the miners?

A. The miners in their annual or biennial conventions, as the case might be, prior to the expiration of their agreement; usually in the month of January preceding April, which is the scale year.

3383 Q. They would have a miners' convention?

A. Representatives of all of the Mine Workers over the country.

Q. These representatives would be selected from local unions scattered throughout the country? A. Yes, sir.

Q. In the various districts in which the organization exists? A. Yes, sir.

Q. And at that convention they would decide upon, after discussing it themselves, a wage scale demand that should be presented by their representatives to the joint conference of operators and miners? Is that correct?

A. All scale resolutions or having a bearing on that, introduced by the local unions, would be referred to the scale committee, composed of the presidents of each district of the entire jurisdiction, and canvassed, and the report submitted back for amendment or adoption, as the case might be, and then that became the demand of the mine workers.

Q. That became the demand of the mine workers?

A. Yes, sir.

Q. Then the representatives of the miners would take that wage scale demand and meet the operators in a joint conference? Is that correct? A. Yes, sir.

Q. Now, where would those joint conferences be held?

A. The joint conferences, sometimes were held by agreement in one city or another; the operators would name the city sometimes, and we would acquiesce, and if we named it this time they might suggest that they be permitted

3384 to name the city the next time.

Q. And you met in various cities at the various conventions? A. Yes, sir.

Q. Were they held in public?

A. Yes, sir, largely. Our minutes were always published, and the press was fully advised of what occurred, and there were a great many visitors, according to the accommodation of our halls that we were meeting in. It was open to those that cared to avail themselves.

Q. And following the submission of the miners' demands to the operators, what followed?

A. There were usually days of debate, and when the thing would reach what we commonly called a deadlock, that is, no progress being made, and the subject being exhausted in debate, we usually followed the procedure that had long been

established to submit it to a joint sub-committee, who took the whole subject matter in tow, or under consideration, more properly speaking, and then they considered that until they were able to agree or report a disagreement, and usually the sub-committee would bring in a report that we would be able to unite in recommending tentatively to our people.

Q. At some of these joint conferences there was no agreement reached at all, is that right?

A. I think at times there has been no apparent agreement reached.

Q. Now, in these debates what would be the character of the argument used by the operators? A. By the operators?

Q. Yes, in opposition to the demands of the miners
3385 for their wage scale?

A. Running true to form, they always opposed any betterment of the miners' conditions.

Q. Would the debate cover a long range of subjects?

A. Yes, sir.

Q. Financial condition of the country—

A. Yes, sir, and the physical condition of their veins, the competition, and the quality of their coal, and all of the subjects that they could utilize that would bring force to bear.

Q. And the miners would retaliate with such argument as they had at their command? A. Yes, sir.

Q. And now if they agreed, how was that agreement expressed? A. What is that?

Q. If they agreed at all in these joint conferences, in what form was that agreement expressed,—in a wage scale contract?

A. That was expressed in a written contract, basic contract, setting forth the matters agreed upon, and the miners would take it and submit it either to a reconvened convention of the United Mine Workers, or subject it to a referendum vote to the mine workers of the entire bituminous membership, with their recommendation of approval.

Q. And the scale would only be a tentative one until it met the approval of a convention or of a referendum vote?

A. Whenever the mine workers agreed with the operators it was tentative, and with the understanding that it was subject to either the sanction of a reconvened convention
3386 of the United Mine Workers, or a referendum vote of the bituminous membership.

Q. Now was there ever any other agreement, oral or written, express or implied, between the miners and operators at these joint conferences, than the scale contract which was

signed and submitted to the membership of the miners' union, either in convention assembled or by referendum vote?

A. Absolutely none whatever.

Q. Was there ever, between the miners and operators at these conferences or elsewhere, or between the miners themselves, any agreement, conspiracy, combination or collusion that they would interfere with the production of non-union coal? A. Absolutely not.

Q. Now, Mr. White, you were president of the International organization in 1914, throughout the year, were you?

A. Yes, sir.

Q. It has been testified here by a witness, James McNamara, that he had a conversation with Pete Stewart, and that Pete Stewart said that he had been up to Kansas City and had had a talk with White with reference to the strike at the Bache-Denman mines at Prairie Creek, and that White had said—that means you—that they had arranged a plan up there to prevent Bache from producing coal. Did you ever have such a conversation?

A. Absolutely not, it is a tissue of falsehoods.

Q. What, if anything, did the International organization have to do with the Bache-Denman strike at Prairie Creek?

A. Absolutely nothing whatever.

3387 Q. It has also been testified by Mr. McNamara, that during the special convention at Ft. Smith on the 18th to the 23rd of May, 1914, that Jim Slankard came to him and said, "John P. White wants to see us at the Main Hotel after the convention adjourns", and that he said, "All right, we will stay together." That a little after 12 o'clock when the convention adjourned he and Slankard went to the Main Hotel and stayed in the lobby and in a few minutes White came along; that you nodded your head for them to follow you to the elevator; that you, he and Slankard went up in the elevator to the parlor on the first floor, and you shook hands with them and said, "How is things at Hartford"? And he told you, all right, and that he said, "Things are a little watery in Prairie Creek No. 4 yet", and that you said, "Yes, I have been informed on that", and that he said, "Stewart told me that they can not get enough men to operate the mine", and you said, "If they do do that, we must prevent that coal from getting into the market." That you said, if Bache coal, scab dug coal got into the market it would only be a matter of time until every union operator in that country would have to close down his mine, or scab it, because the union operators could not meet Bache competi-

tion. Did you have any such conversation with a man named James McNamara at that time?

A. Not knowing the gentleman, I absolutely had no such conversation as you have read.

Q. Did you have any conversation with anyone concerning the strike at Prairie Creek during this Fort Smith convention? A. Absolutely not.

3388 Q. What was the purpose of the convention at Ft. Smith, the special convention of District 21 that you attended?

A. The cause of my attendance at the special convention was occasioned by the internal affairs in the southwestern districts, because some their officers had been charged with being corrupted by the coal operaters money, in the consideration of wage agreements, and that was the reason why I was here, to insist upon the procedure of clearing our house of any corruption.

Q. Now, it was further testified by Mr. McNamara that you said, "When you go back to Hartford I want you to tell the men what I have told you, but don't them I have told you;" and that you said that you did not want the national organization mixed up in this case; that you said, "So far you have handled it, this part, and we have West [Viriginia] and Colorado on our hands, and we can not bear any more fights." Did you have any such conversation with him or anyone else? A. No, sir.

Q. Did you take two men at the Main Hotel and take them up stairs and talk with them about the Bache-Denman trouble at Prairie Creek? A. I did not.

Q. It was further testified by Mr. McNamara that you rose up and walked over to the elevator and said, "Let me go down first and you fellows follow me," and that that is the last he saw of White for a long time. Did any such incident occur at all? A. No, sir.

Q. Now in 1916 were you at Hartford?

3389 A. I was in the Hartford Valley; yes, sir, I was in the town of Hartford about six years ago now.

Q. Did you speak at that town?

A. I delivered a public address there in the morning.

Q. And did you speak at any other place in the Hartford Valley?

A. At Huntington in the afternoon, and Bonanza in the evening.

Q. Who was with you when you were on that trip?

A. District President John Wilkinson, of District 21 at that time, and International Board Member William Dalrymple.

Q. On that occasion did you have any meeting with a man named McNamara, or who was introduced as McNamara?

A. I never knew Mr. McNamara. I had occasion, just as I was leaving the hotel a crowd of miners, as I now recall, came and approached me about some grievance, and in line with my established policy I referred them to their district president, because I never interfered in the internal affairs of any district, in taking up of grievances, and I learned afterwards that among that crowd was one James McNamara, but to me, I knew him not.

Q. Was there any demand made on you by James McNamara for money? A. No, sir.

Q. Now, Mr. McNamara further testified that he saw you next at Hartford, at the hotel. "This hotel is up near the school house, there are two there in town, one down by the depot and one up by the school house, and there was a car parked there, and I heard that White was in town with other national men," and that James Ferns was with him. Was Ferns with you there? A. He was not with me.

3390 Q. And there were some strangers and "I was told they were national men, but I didn't know them; I heard one of them was Frank Farrington, but I didn't know him." Was Frank Farrington along? A. No, sir.

Q. You had no conversation with Mr. McNamara about the Prairie Creek matter, or anything growing out of the Prairie Creek matter? A. Absolutely not.

Q. And the committee that called on you, you referred them to Mr. Wilkinson, the district president? A. Yes, sir.

Q. Was Tom King a national organizer in 1914, or national board member?

A. No, I don't believe he was a national organizer,—I am sure he was not in 1914.

Mr. Warrum: You may examine.

Cross Examination

By Mr. Drinker:

Q. Now, Mr. White, when all is said, who do you think burned up the Bache-Denman properties?

A. Who do I think—

Mr. Warrum: We object to that as not cross examination at all.

Mr. Drinker: Can I ask him that question?

The Court: He has not been asked anything about the burning on direct; we do not know he knows about it.

3391 Mr. Drinker: I would like to ask him that question, but if the other side objects I will withdraw it.

Q. When did you first learn about the riot of April 6th, or call it whatever you want?

A. Oh, I just saw it in the press.

Q. That is the only place you saw it? A. I think so.

Q. You are sure that is where you learned about it?

A. I think so, up around Kansas City, as I recall.

Q. That is your best recollection as to where you first learned about it?

A. I don't know, I was with those boys, many of them from around here, up at Kansas City.

Q. Is it your best recollection that you learned from it in the newspapers, or from the United Mine Workers Journal, or from Stewart, or somebody told you?

A. I think I saw it in the papers at Kansas City, some press dispatch of it.

Q. And not in the United Mine Workers Journal?

A. I don't know whether it appeared in the United Mine Workers Journal or not.

Q. You were in Kansas City on this Holt Howat business, were you? A. Yes, sir.

Q. That is when that law suit was going on about that, where the disclosure came out that resulted in this convention that you talked about? A. Yes, sir.

3392 Q. That is what you were doing there at the time?

A. I was there in connection with that, and stayed there, I think, to assist in the wage negotiations of that year.

Q. And you were a good deal upset about that business, you have always been strong against graft in the organization, and you were much troubled that these people were accused about that?

A. They demanded an investigation, and I saw that they got it.

Q. Who?

A. Howat and Holt, and the miners involved in that joint conference of that year. It was my duty, as president, to see that the avenues were opened and an investigation made.

Q. And that is what you were doing? A. Yes, sir.

Q. How did that disclosure happen to come about—Mr. Bache had started a suit against Mr. Keith, and that is how that became public, was it?

Mr. Warrum: This is not cross examination.

Mr. Drinker: You will see the point of it in a minute.

The Court: Proceed.

To which action and ruling of the court the defendants, and each of them, at the time duly excepted and still except.

Q. Mr. Bache had started a suit against Mr. Keith, the president of the operators' association, for an accounting of the funds of the association? A. All I saw was in the press.

Q. You were there at the hearing of those proceedings, and heard the testimony? A. I heard some of it.

3393 Q. You know that is how that started?

A. I heard that was the way it started, and later on we became an intervenor in the suit between them.

Q. You knew about it beforehand, from what people had told you, that there were such charges going on?

A. I had heard some rumors, but I did not know of my own knowledge.

Q. It was Mr. Bache's suit that brought this about, and finally resulted in this convention that you were here in May attending?

A. It was Mr. Bache's suit that brought it to the attention of the public, and the Mine Workers, and then later on the miners were—there was nobody specifically named in it, but the miners demanded a showdown on it, and as a result of that, certain things come to face that resulted in this convention being held here to explain the situation to the miners of this district.

Q. When you say there was nobody named, did not Hazen testify there? A. At that time there was nobody named.

Q. In the suit you were attending in Kansas City, Hazen testified who he gave the money to? A. Yes, sir.

Q. Now, what is an outlaw—you have not been asked about that, and I would like to ask you about a lot of things. Now, do you remember the speech you made to your Executive Board in May, about this riot, do you?

A. I did not make a particular speech about that.

3394 Q. I won't call it a speech.

A. I was discussing the Howat-Holt question, and showing how disturbed the conditions were in the southwest, and incidentally I touched upon what I had heard and read in the press as reflecting the situation down here.

Q. When you say heard and read in the press, do you mean in the United Mine Workers Journal?

A. No, here in Kansas City, what I read in the papers and heard from people attending this conference.

Q. Was Pete Stewart there? A. Yes, sir.

Q. Was Jimmy Mullens there—Mr. Mullens, I mean?

A. I don't know whether Jimmy was there or not.

Q. Do you remember that two days after that Mr. Stewart went to Ft. Smith for the purpose of finding out what happened in that riot? A. No, sir.

Q. Do you remember when he came back? A. No, sir.

Q. Did he tell you what happened there? A. No, sir.

Q. Did you talk about this Bache-Denman riot with Mr. Stewart? A. No, sir.

Q. Is that what you call a "tissue of falsehoods"?

A. I am not making that statement in answer to this.

Q. What did you mean about a tissue of falsehoods?

A. If you will refer back to my answer, that will answer you.

3395 Q. You said that the statement that you had talked to Pete Stewart was a tissue of falsehoods.

A. I did not name Pete Stewart specifically.

The Court: It was in relation to what McNamara said.

Q. He said that McNamara's statements that he had talked to Pete Stewart about the Bache-Denman strike was a tissue of falsehoods.

A. I don't know that I can express it more forcibly.

Q. You mean that—

A. I mean the whole scheme wherein he said I had any knowledge, and was acquiring and directing, directly or indirectly, anybody to participate in the things that McNamara alleged that I had, that the whole thing is a tissue of falsehoods.

Q. You mean you did not know anything about any of this strike?

A. Yes, sir, I did not know anything about it. I did not know the equasions about it in any way, shape or form. Nobody requesting my support in any way, shape or form.

Q. It did not interest you a bit? A. No, sir.

Q. That an open shop mine was running in the Hartford Valley?

A. Not any more than it would if it was in my home state.

Q. Would it interest you if it was in your home state?

A. Not to a disturbed degree.

Q. If you had an open shop mine in Iowa, would that interest you? A. Not much.

Q. If it was an open shop mine in Iowa, shipping 5,000 tons of coal a day, non-union coal, right alongside of your

home town, would that interest you a bit?
3396 A. It might casually interest me, but it would not be my function to deal with it, as national president.

Q. As national president, an open shop mine, mining 5,000 tons of coal, right next to a union mine, would not interest you a bit?

A. No, sir, that would be up to the district of that jurisdiction, and District 21 was a united, organized district for years.

Q. I am not talking about jurisdiction, I am talking about interest. A. I know what you are talking about.

Q. Now when you were making this statement to your Executive Board, and I will read it to you—have you read it today? A. What statement?

Q. The statement in the May meeting of the Executive Board, when you talked about the boys marching down there and breaking the jaws of the Colorado guards?

A. Yes, sir, I have read it.

Q. It is perfectly natural that you would read it over, and be familiar with it? A. Yes, sir.

Q. I will read it, and we can discuss two or three things in it. You said, as it is reported in these meetings, that when Mr. Bache got this information, that is, the information about some of the people being bribed,—Fred Holt was one that was accused, and Howat was the other? A. Yes, sir.

Q. You said, "When he secured this information he immediately went down to Arkansas and started to run his mine non-union. The boys simply marched in on him in a
3397 day down there, and kicked his Colorado guards out of there and broke their jaws and put the flag of the United Mine Workers on top of the tipple, and pulled the fires out of the boilers, and that was all there was to it, and the mines have been idle in there ever since. I do not say that our boys did this, but I mean the people from all through that country marched in and stopped the work, and when the guards offered resistance, several of them were roughly handled, but no lives lost, as I understand it."

Now, when did you get the idea that it was not the miners that did that, but it was the community, who told you that?

A. I understood from the tone of the passages in the press, and the discussion of everybody, that it was a general uprising of an outraged community against those conditions.

Q. Why do you suppose they put the United Mine Workers flag on the tipple, if it was the community?

A. I naturally [concluse], the entire community depended upon mining for a livelihood, and was naturally in sympathy with the—

Q. (Interrupting) You were strong for law and order when you were president?

A. My record will speak for that.

Q. You always opposed any illegal methods being used?

A. Yes, sir.

Q. Always did your best to prevent any such thing?

A. Yes, sir.

Q. And you never countenanced violence or intimidation or destruction of property?

3398 A. I always believed that peace and tranquillity was our best friend, and violence and disorder our worst enemy.

Q. What did you do to find out who was mixed up in this fracas, where the jaws of people were broken, and the company property interfered with? What did you do to find out who did that?

A. I had no intention of finding out. This district had an organization complete, and compact, and I had no right, under my authority, to interfere in the internal affairs of the district without a request.

Q. Did you speak to Stewart about that at all?

A. No, sir.

Q. Did you tell him you did not stand for such things, and he had to go down there and exercise the authority you say he had, and put a stop to it?

A. No, sir, I did not tell him that, but I told the world that when I became president; in expressing the policy of the United Mine Workers.

Q. I am not interested in what you told the world, I am interested in what you told somebody that could do something. Did you tell Stewart that you disapproved of that, and you wanted him to take steps to stop it?

A. I have no recollection of discussing it with Stewart or anybody else.

Q. Did it interest you that the United Mine Workers had injured people and property?

A. I would have the same concern of that as anybody else being injured.

3399 Q. How much concern would you have of anybody else, if you had power to stop it?

A. I did not have power to stop it, and I did not assume that I had.

Q. Did you not, as International president, have the right to forfeit the membership of any man on any account?

A. No, sir.

Q. Does not the constitution say you have that authority?

A. No, sir.

Q. Can you suspend the charter of any local union, subject to the approval of the Executive Board?

A. Not without the direction of the International Executive Board.

Q. Do you mean that the International Executive Board had to tell you before you could discharge an individual miner?

A. There had to be some cause of action, some appeal and protest filed, under the constitution of the United Mine Workers.

Q. You mean to tell me if an individual miner slandered an officer of the union, or if he did something contrary to your rules, that you could not forfeit his membership, only subject to the Executive Board's approval?

A. Not only am I telling you that, but I would have to go to the local in which that man was a member, and prefer charges against him there.

Q. Of course he would have to have a hearing, but do you mean to tell me in practice you never forfeited the membership of any man? A. No, sir.

3400 Q. Never started it [yourslef?]

A. No, sir, the laws of the United Mine Workers show how their membership can be taken away from them.

Q. And the International president has no power to do that? A. No, sir.

Q. Who has that power?

A. They must prefer charges in the council of the organization.

Q. I am not asking you that.

A. If you are going to propound a question you will wait until I explain it.

Q. Who has power in the United Mine Workers to forfeit a man's membership; who is the man that does that?

A. A man—

Q. I don't want any speech.

The Court: Let him answer the question.

A. The constitution of the United Mine Workers provides that if a member is accused of wrong doing, charges must be preferred against him in the branch of the organization in which he holds membership. As an illustration, if I was a miner, working in one of these mines, and someone said that I had violated the laws of the United Mine Workers, charges would have to be preferred against that man, or myself, as the case might be, in the local union where I held membership,

and if I was found guilty, I would have the right to appeal, next to the district organization's executive board, and if that appeal was sustained, I could carry that to a national convention of the United Mine Workers. That is the procedure.

3401 Q. Now, you have not answered my question yet. I say who has the right to forfeit the membership?

A. The national convention would be the final power, if he took his appeal far enough.

Q. But who has the power to forfeit his membership, and whose action is appealed to the convention?

A. If his local union's action was sustained, —

Q. Does the local union forfeit his membership?

A. If they order him suspended on the basis of a hearing, that local union, if he appealed and their action was sustained, that local union would be notified that their action was finally upheld, and the man would stand suspended.

Q. Has not the national president, after a man has had a chance to defend himself, has he not got the power to forfeit the membership of any member of the union? Yes or no.

A. He certainly has not.

Q. What body has power to do it?

A. I have told you that no individual has that power.

Q. I didn't ask what individual.

A. I told you that it emanated first with the local union, and if there is no appeal that would end it, and the decision would be binding, but if there is an appeal, he may have that appeal put to the district executive board, and if they sustain the action he may appeal to the International, and if they sustain the lower court, he has that inevitable right of appeal to the International convention, the last court.

Q. And who has power in the union to forfeit the

3402 charter of the local union?

A. The executive board.

Q. Has the president that power?

A. They may confer it on him.

Q. Between the conventions, has he not all the powers of the executive board?

A. Only subject to the board's direction.

Q. But before the board meets, has he not all the power of the executive board, according to his prerogatives?

A. No, sir, he has not.

Mr. Warrum: The Supreme Court has construed this man's powers.

The Court: You are going quite a ways in your cross examination.

Mr. Drinker: I suppose so, I got off on these matters.

Q. Do you remember a letter you wrote to Secretary of Labor Wilson in November, 1914, that you produced in Indianapolis when I took your deposition six years ago?
A. Yes, sir, I remember about it, I believe.
Q. Do you remember that you said as president of the organization you would be glad to cooperate in any way to prevent the recurrence of that matter, and I want to ask you what you ever did, after you heard of the Bache-Denman trouble in April, 1914, to prevent a recurrence of this trouble?

Mr. Warrum: The defendants object, because they went into this matter themselves on cross examination.

The Court: Yes, and he has said he had no right to
3403 do that, that it was a district matter.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Now, you have met lots of union miners when you were president, have you? A. Yes, sir, I think I have.
Q. You are always cordial to them and speak to them?
A. Yes, sir, I try to be.
Q. Do you remember everyone that you ever met and talked to?
A. No, sir, I would not know that, I might if I was particularly interested in some subject.
Q. Did you know Jim Slankard? A. No, sir.
Q. You don't remember him at all? A. No, sir.
Q. You don't remember McNamara at all, you did not until this very time?
A. I don't remember him now, he was only identified to me by a friend that was with me.
Q. You did not know him at that time? A. No, sir.
Q. He was just an ordinary check-weighman, and Slankard was not a member of the union? A. I don't know him.
Q. Now, when you were here at Ft. Smith, did you know that there was an injunction in force forbidding anybody to molest the Bache-Denman property, or encourage anybody else to do it? [—]
3404 Q. Nobody told you that? A. No, sir.
Q. Did not Stewart or McLachlan, or anybody else, mention the Bache-Denman strike to you?
A. I have no recollection of it, I never made any reference to it myself, and had no occasion to.

Q. You don't remember talking to anybody about it here at that time, about Bache, or his open shop operations at that time? A. No, sir, I do not.

Q. When you were here, that whole week nobody mentioned it to you?

A. Not that I have any recollection of.

Q. Do you know that they did or did not?

A. I know that they did not.

Q. You remember everything that was said to you that whole week?

A. I remember pretty much my mission here.

Q. And you are willing to swear that during that whole week —

The Court: Whatever he testifies to, he swears to.

Q. You are willing to testify that during that entire week, McLachlan or Stewart or nobody else mentioned the Bache-Denman strike to you?

A. I have repeatedly stated to you that.

Q. And you did not ask anybody what was going on down there? A. I had no occasion to.

Q. And you did not? A. I did not, no.

Q. How long was Tom King national organizer?

A. I think, I could not be positive, but Tom King, I
3405 think, came into the service of the national, as a national organizer, some time late in 1915, and died in the service. He was organizer somewhere along up in the early part of 1917. It is a matter that I don't just recall.

Q. You mean you are sure that Tom King was not a national organizer before 1914?

A. Yes, sir, Tom King was a national organizer with me when I was vice president of the organization in 1908, under T. L. Lewis' administration.

Q. And before that did not President Mitchell appoint him at the suggestion of Mr. Hanraty, originally?

A. I can't say.

Q. How many years was he a national organizer?

A. I knew him when I was vice president, and he served under T. L. Lewis and then retired, and I appointed him some time, I think, in 1915. The records would show that.

Q. And do you know whether he was a national organizer when you were president?

A. Yes, sir, he was a national organizer under me.

Q. You were president from 1911 to 1917, were you?

A. Yes, sir.

Q. How long in that time was he a national organizer?

A. I think, as I have stated, he went on some time, if I remember correctly, late in the year 1915.

Q. No, before that.

A. He was not in the service before that under my administration at all.

3406 Q. Are you sure of that? A. Yes, sir.

Q. Have you looked it up?

A. No, sir, but I am sure of it.

Q. If you saw his name on the roster for 1913, would you still be sure of it?

A. I would still believe, unless I was convinced absolutely by the records, that he was not on the books, I don't recall appointing [—] until late in 1915.

Q. Are you sure that he was not on there when you became president, and stayed on under you?

A. I am sure that he was not, because I suspended every organizer that was on the staff, with the exception of one, when I became president.

Q. And you appointed them all yourself? A. Yes, sir.

Q. And you are sure he was not one?

A. I am pretty sure.

Q. And if his name is on a roster for any of those years, it is a mistake?

A. He could be on preceding my administration.

Q. During 1911, 1912 or 1913?

A. I am pretty sure he was not on.

3407 Q. You say you never talked to James Mullen about that strike that was going on down there during the entire time?

A. No. I had no occasion to discuss it with Mullen. He didn't have charge of anything down here. He was just assisting in certain grievances.

Q. What was his business?

A. He was a national board member.

Q. For this district? A. Yes, sir.

Q. And he was up and down continuously?

A. Sometimes he was here and sometimes in other states attending to grievances referred to him by the executive board.

Q. He lived in Midland, didn't he?

A. I believe his home was in Midland.

Q. He was up and down and out of his home a number of times? Wasn't he?

A. Yes, sir, he visited his home occasionally, I suppose.

Q. Did you ever talk to him about the affairs of his district?

A. I have just asked him in a casual way how things were going on in the district, something like that, but nothing of specific interest.

Q. Did you ever talk to the district president or district Board members about matters of importance in the district?

A. No, I wouldn't have much occasion to do that. They were given complete autonomy over their own affairs, to direct the energies of their own district.

Q. For what purpose were they given complete
3408 autonomy? Could they do anything they wanted to?

A. As long as it did not conflict with the laws of the parent organization.

Q. What were they supposed to be working for?

A. Working for?

Q. Yes. What were they seeking to accomplish?

A. To keep their contract and promote international peace and carry on the work of the organization generally, as outlined in the aims and objects in the preamble of the district constitution.

Q. And the unionization of the non-union miners of the country? A. Oh, sure, to organize.

Q. And to keep all the union mines unionized?

A. Yes.

Q. That is one of the things that they were supposed to be doing? A. To organize unorganized, yes.

Q. And to keep union mines from going open shop? That is another thing they were supposed to do?

A. That is not specifically mentioned.

Q. No, that is not specifically mentioned, but is that one of the things they are supposed to do? A. I don't know.

Q. You don't know?

A. No. You will have to ask them about that.

Mr. Drinker: I will have to ask them about that. All right. Good bye. I beg your pardon.

3409 Redirect Examination

By Mr. Warrum:

Q. Let me ask you a question. When did you cease to be president of the United Mine Workers?

A. October 25th, 1917.

Q. Did you take some official position with the government at that time?

A. I went with the United States Government in the capacity of Labor Advisor of the Fuel Administration, during the war.

Q. And served as such during the war? A. Yes, sir.
Q. Appointed by President Wilson? A. Yes, sir.

Mr. Warrum: That is all.

Recross Examination

By Mr. Drinker:
Q. Did your salary stop with the United Mine Workers?
A. No, but I served my government without any salary. The United Mine Workers gave me my salary and expenses.
Q. During that entire time?
A. Yes, sir. I refused to accept any salary from my government.
Q. But the United Mine Workers paid your salary?
A. Certainly they did.
Q. There is nothing wrong about that?
A. I know there isn't. I would not have done it.
Q. You would not have told me if there had been anything wrong about it?
3410 A. No, I said I would not have done it. I didn't say I would not have told you.
Q. I know you didn't mean that?
A. I didn't say it, either.

Mr. Drinker: I know you didn't mean that. I am not accusing you of anything. We have enough differences without imaginary ones.

The Court: Stand down.

(Witness excused.)

JOHN WILKINSON, of lawful age, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. What is your name? A. John Wilkinson.
Q. What is your business?
A. I am employed by the Consolidated Underwriters.
Q. Of Kansas City? A. Yes, sir.
Q. They are insurance people? A. Yes, sir.
Q. How long have you been so employed?
A. Since November 13th, 1922.
Q. Were you president of District 21 in 1916?
A. Yes, sir, elected in 1915, November, assumed office in February, 1916, and resigned November 13th, 1922.
3411 Q. Had you been a coal miner before that time?
A. Yes, sir.

Q. Do you remember the occasion of the visit of President White, president of the international organization, to the Hartford Valley, in 1916? A. Yes, sir.

Q. Were you with him? A. Yes, sir.

Q. Did he speak at Hartford? A. Yes, sir.

Q. And went across to Huntington and spoke there?

A. Yes, sir.

Q. What, if anything, do you know of him being approached by one James McNamara at that time and a money demand made?

A. On the Sunday morning Mr. White and I had spoken at Hartford, and after the meeting we went to the Davis hotel, and the lady there prepared us an early lunch in order for us to go to Huntington by automobile and speak there in the afternoon. It was while the lady was preparing the lunch that McNamara, with two or three others, came to the hotel and approached me, McNamara asking for an introduction to Mr. White. He said he wanted to see him on some matters, and about that time the bell rang and the lady came and told us that lunch was ready. We then went and had lunch and after having lunch proceeded to get in the car that was waiting on the outside to take us to Huntington. McNamara approached us while we were sitting in the car ready to go,
and told Mr. White that he wanted to see him on cer-
3412 tain grievances. Mr. White then referred him to me
and said I was district president and any grievances they had they would have to take them up through me.

Q. Did he have any further conversation with Mr. White at all? A. No.

Q. Did you afterwards receive letters from this man McNamara demanding money from you?

Mr. Drinker: That is objected to, if the court please. The letters would be the best evidence.

The Court: The foundation was laid for that.

Mr. Drinker: I object to the question, if he received any letters purporting to have them from McNamara. If he can identify them, that is another thing.

The Court: Answer the question.

Mr. Drinker: Asking for money he said.

The Court: Answer the question.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

A. I would like to have that stated again.
Q. Did you receive letters afterwards from McNamara?
A. Yes, sir.
Q. How many? A. I received probably five or six.
Q. Five or six letters from McNamara? A. Yes, sir.
Q. What became of those letters?
3413 A. They were in my personal files until I resigned from office.
Q. What became of them, do you know?
A. I destroyed all matters that were in my personal files that were not of any use to me.
Q. They are not in existence? A. No, sir.
Q. You kept no copies of them? A. No, sir.
Q. What did those letters contain?

Mr. Drinker: That is objected to, if the court please. It has not been proven that the letters came from McNamara. McNamara himself said they had a shadow man up there that was writing letters to Wilkinson.

The Court: Answer.

Mr. Drinker: Exception.

A. Was the question what did the letters contain?
Q. Yes, what was the substance of the letters? Or the text if you remember the text?
A. McNamara claimed that the organization owed him money, and he said if he didn't get money for having done certain things in connection with the Prairie Creek trouble that he would not only do his best to destroy the organization, but also threatened me with personal violence.
Q. Did you answer any of those letters?
A. No, sir. I did take the matter up with Mr. Grant, our attorney, subsequent to that, and told him if I con-
3414 tinued to receive them, I would expect him to protect me from blackmail.

Mr. Warrum: That is all.

The Court: Cross-examine.

Cross Examination

By Mr. Drinker:
Q. When was this? What time of the year?
A. When was what?
Q. When you got these letters?
A. I had letters frequently, that is, five or six letters, beginning from about October, 1916, to sometime in 1918.

Q. And he wanted to get the board members wages and expenses that had been promised him, he said, by the district people? A. No, he never mentioned any exact amount.

Q. What did he say he was entitled to?

A. He said he wanted me to come to a settlement with him.

Q. Didn't he say what he thought he was entitled to?

A. He mentioned the sum of three hundred and some odd dollars, and I asked him what it was for, in personal conversation.

Q. And what did he say?

A. He said it was for work that he did during the Prairie Creek trouble. I asked him who for. He said for the organization. I ultimately questioned,—

Q. Never mind that. You questioned him?

A. Questioned the international organization.

Q. Never mind that? A. All right.

Q. He wanted $350.00?

3415 A. Three hundred and some odd dollars. I forget the exact amount. I know it was over three hundred dollars.

Mr. Drinker. That is all.

The Court: Stand down.

(Witness excused.)

Mrs. Sam Dorman, of lawful age, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. What is your name? A. Mrs. Sam Dorman.

Q. Where do you live now? A. Prairie Creek, Arkansas.

Q. Did you live there in 1914? A. Yes, sir.

Q. Where did you live with reference to Prairie Creek mine No. 4? A. At the same place.

Q. Where was that with reference to Mine No. 4 and the depot? Was it between Prairie Creek Mine No. 4 and the depot? A. Yes, sir.

Q. How far was it from the depot?

A. Just a little ways. It wasn't far.

Q. How far from mine No. 4? A. Not very far.

Q. Did you ever see the non-union people from the

3416 Bache-Denman mines going along in front of your house, from the mine to the depot? A. Yes, sir.

Q. How often did you see them?

Q. He didn't set it on fire? A. I don't know.
Q. As far as you know? A. No, I don't know.

(Witness excused).

Mr. Warrum: We offer to read the testimony of DR. D. B. BUTLER, taken at the former trial, found on page 2671 of the record.

"Direct Examination

By Mr. Covington:

"Q. State your name? A. Dr. Butler.
Q. What are your initials? A. V. V.
Q. Where do you live, Doctor? A. Huntington.
3503 Q. How long have you lived in Huntington?
A. 11 years.
Q. Do you remember the day that the Coronado mine burned in 1914 in July? A. Yes, sir.
Q. Were you by there that day? A. Yes, sir.
Q. Tell the jury what you saw, Doctor, as you were passing there,—who was with you, first?
A. My wife and I were going over to Arkoal, and I had a couple of patients over there, and the road crosses the railroad track above the mine, and I happened to be looking down that way and I saw a little light under the tipple, and so I stopped and told my wife, I said,—I said, "The Coronado will be afire the first thing we know", and we stood there and watched it a few minutes, and we saw it kept getting larger and larger, and then we drove on up to the [story] there, just a short distance. There were three or four men sitting on the porch, and I told them, I said, "Coronado is afire, you had better go down there and put it out", and they went around and looked and couldn't see no smoke, or anything, and then they went on down there, or I suppose they did; and my wife and I went on to visit the patients, and when we came back the whole mine was afire, the whole tipple.
Q. At the time you saw it, you say it was a small light under the tipple, or elevator, or whatever it is?
A. Yes, sir, it was right under the chute.
3504 Q. Now, did you see anybody about the mine, coming away from there, crossing the field, or anybody about there at all? A. No, sir."

Mr. Lucas: (Reading).

Cross-Examination

By Mr. McDonough:

Q. Doctor, what direction were you going?

A. I was going north.

Q. And does the road running nearby Coronado mine, is that the one that you were on? A. Yes, sir.

Q. Is it a public county road along there?

A. No, sir, it is not a public country road.

Q. Did you cross the creek about the time you got in Coronado or just before? A. Just before.

Q. And how far were you from Coronado when you first saw this light?

A. Oh, I suppose it is three or four hundred yards from where I first saw the light from the road to the tipple.

Q. What time of day was it, Doctor?

A. It was about noon.

Q. You were traveling north, you say? A. Yes, sir.

Q. You then went on your journey, but you stopped by the store, you say? A. Yes, sir.

Q. How far is the store from the mine?

3505 A. Well, the store,—[its] about a couple of hundred yards from the crossing to the store.

Q. A couple of hundred yards further away than when you first saw it? A. Yes, sir.

Q. And when you get up there you couldn't see any smoke?

A. No, sir.

Q. Could you see the tipple from the store? A. Yes, sir.

Q. And you saw no smoke? A. No, sir.

Q. It was some three or four hundred yards away, at that point? A. Yes, sir.

Q. You know who the men were at the store that you spoke to? A. No, sir.

Q. You didn't know any of them?

A. Well, I knew them, of course, but I don't remember now who they were.

Q. You mentioned to them something about it, did you, there? A. Yes, sir.

Q. And all of you looked down there and didn't see anything at all? A. I did not.

Q. Didn't see any smoke? A. No, sir.

Q. Or didn't see any fire? A. No, sir.

3506 Q. And you went on your journey then?

A. Yes, sir.

Q. And when you came back, how long had you been away when you came back?

A. I guess 15 or 20 minutes, maybe a half hour.

Q. And when you came back the whole tipple was on fire?
A. Yes, sir.
Q. Where did you say the small blaze was when you first saw it? A. It was right under the chute.
Q. Can you show us, is that a picture of the tipple that is before you? A. It looks like it.
Q. Referring to plaintiffs Exhibit 69, is that the tipple, do you recognize that as a picture of the tipple?
A. I don't know whether that is the tipple or not.
Q. You are not able to locate the blaze on that, are you?
A. May I step down here?
Q. Yes.
A. I saw the fire, the blaze, it was right under here, under this chute.
Q. You recognize that now as the tipple, or a picture of the tipple? A. It looks like it.
Q. It was under the coal chute when you first saw it?
A. Yes, sir, right about there (Witness indicating).
Q. How far is Coronado from Huntington where you
3507 live? A. Two and a half miles.

(Witness excused.)

WILL MILLER, called as a witness on behalf of defendants being first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. State your name to the court and jury?
A. Will Miller is my name.
Q. Where do you live, Mr. Miller?
A. I am living in Huntington, right at the present time, my family is there.
Q. Where did you live in 1914? A. In Huntington.
Q. You were a coal miner? A. Yes, sir.
Q. And belong to the union? A. Yes, sir.
Q. Do you remember the day that the Coronado tipple burned? A. I do.
Q. Were you at your father-in-law's house at that time?
A. I was.
Q. What was his name? A. Schmidt.
Q. Did you testify at the former trial of this case?
A. I did.
Q. Tell the jury what occurred when your attention was drawn to the fire at the tipple, what happened?
3508 A. Well, there was no work that day at the mine; I was working for Central, and my father-in-law wanted

me to go over and clean out the well for him, and I went there. I had drawed the water out, and went in the house to get a drink, and he lived close to Mr. Willsey there, and Mr. Willsey and his boy came down the hill toward the mine and said the tipple was afire. Me and Mr. Schmidt, my father-in-law, and Mr. Willsey and his son, met right at the barn and walked down to the shack together.

Q. Was there anything said about putting the fire out?

A. The fire was very small, and I told Mr. Willsey, I said, "If you want to put this out, Mr. Willsey, me and the old man will give you a hand to putting it out".

Q. What, if anything, did he say?

A. He said that Mr. Denman,—Bache will be tickled when he hears it has burned, he has it heavily insured.

Q. Did you testify at the former trial of this case?

A. Yes, sir.

Cross Examination

By Mr. Drinker:

Q. What did you say he said?

A. Mr. Willsey said "Mr. Bache will be tickled when he hears it was burning, he has it heavy insured, and let it go."

Q. Was that his exact words? A. Yes, sir.

Q. What did you say about Mr. Denman?

A. I didn't say anything about Mr. Denman.

3509 Q. When you said Mr. Denman you got the wrong man? A. Yes, sir, it was Mr. Bache.

Q. Now, just point out and show us where the fire was when it started,—is that a picture of Coronado tipple?

A. Yes, sir, that is something like it.

Q. Now point out where it was that the fire was when it first started?

A. The fire started right in this hopper here; back under the tipple.

Q. Now, where was the path that Mr. Wilsey came down?

A. The path?

Q. Yes. A. He came right down here (indicating).

Q. And how far was that from where Mr. Willsey went to the bin?

A. Maybe fifteen or twenty steps, something like that.

Q. And how high up the tipple was the fire?

A. About four feet.

Q. He showed you a bucket?

A. Yes, sir, there was a teaspoon full of coal oil in this bucket when Mr. Willsey came up.

Q. Now, how high was the flames when you got there?

A. They were about four feet [hight], down in the bin.

Q. And how long was it before they were all over everything?

A. It was not very long, about five minutes I guess when they got fifteen or twenty feet high, in the dry timber.

Q. Did you see coal oil all over it?

A. No, sir, I didn't see any on it at all.

3510 Q. Do you think from the way it burned that it was oil on it?

A. No, there was not very much on it; there could have been a gallon, or a quart or half a gallon.

Q. How big was this bucket?

A. A gallon molasses bucket.

Q. Did that indicate it was full of oil?

A. You could see,—there were two or three teaspoons full that did not pour out of the pail on account of the band.

Q. But was the bucket wet with oil in the middle?

A. You couldn't tell.

Q. Did the fire burn right up quick?

A. Tollerable quick.

Q. Where was the water?

A. About thirty-five yards right east of the shack.

Q. And you didn't do anything about it? A. No, sir.

Q. You didn't do anything about putting it out?

A. No, sir.

Q. Were you ever asked to sign an affidavit about this?

A. No, sir, I was not asked.

Q. Do you know anything about anybody else that was?

A. No, sir, I do not.

Q. Did you hear somebody else that was asked to make an affidavit? A. No, sir.

Q. Do you remember that you testified in the other case?

A. Yes, sir.

Q. You remember that you were asked, were you ever

3511 asked to make an affidavit as to who burned Coronado, and you said, "No", and you were asked if you ever heard anything about the affidavit, and you said, "Well, I heard some of them made one in Midland, but not me." You said that before? A. Yes, sir.

Q. And you were asked what you heard about that, and who said, "Oh, just someone made an affidavit" and that is all? A. Yes, sir.

Q. You said that? A. Yes, sir.

Q. You were a little mistaken when you said a moment ago that you had not heard about an affidavit?

A. I had not heard that.

Q. And did you know who it was that made the affidavit?

A. No, I did not.
Q. Do you know what the affidavit said? A. No, sir.
Q. Did you know anything about Commissioner Cleary coming down there? A. No, I don't.
Q. Did you know that Schmidt made an affidavit?
A. No, sir.
Q. That was the man that just testified? A. Schmidt.
Q. He never told you after that that he made an affidavit?
A. No, sir, he did not.
3512 Q. He is your father in law? A. Yes, sir.
Q. Did you talk this over with him afterwards?
A. No, sir.
Q. Not at all? A. No, sir.
Q. Never mentioned the fact from that day to this?
A. No, sir.
Q. And he never told you about being asked to make an affidavit? A. No, sir.
Q. Where did you live at that time, how near Mr. Schmidt?
A. Something like three quarters of a mile.
Q. Did you see him every day, or every few days?
A. No, sir.
Q. You married his daughter? A. Yes, sir, I did.
Q. He was at your house frequently?
A. Well, occasionally.
Q. And he never talked to you about that at all?
A. No, sir.
Q. Not a thing from that day to this? A. No, sir.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness excused.)

3513 HENRY WALL, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. State your name to the court and jury.
A. Henry Wall.
Q. Where do you live? A. Huntington.
Q. Where did you live in 1914? A. Huntington.
Q. Where is your business? A. Coal miner.
Q. Are you a member of the United Mine Workers?
A. Yes, sir.
Q. Do you remember when the Coronado tipple burned in 1914? A. Yes, sir.

Q. What day was it, if you know?
A. I don't remember now.
Q. About how long after the big battle that occurred out there? A. It occurs to me it was quite a few days.
Q. A few days after that? A. Yes, sir.
Q. When did you first hear or know of the tipple burning?
A. I was [it] home at Huntington, in a boarding house where I boarded.
Q. How far away is that from the tipple?
A. I guess it is 2 miles or 2½.
3514 Q. Did you go over there afterward? A. Yes, sir.
Q. Did anyone go with you?
A. Yes, sir, Jim Ferguson walked over with me.
Q. Was anybody around there when you got over there?
A. There was a few, not very many; about a dozen, possibly.
Q. About a dozen? A. In my judgment.
Q. Was Mr. Willsey there when you got there?
A. The mine foreman, Mr. Willsey?
Q. Yes. A. Yes, he was there.
Q. He was in charge of the tipple of the Coronado mine?
A. Yes, sir, he seemed to be; he was standing there.
Q. Did you hear him say anything with reference to the tipple being insured? If so, what was it?

Mr. Drinker: How long after? Was the fire going on then?

Q. What condition was the tipple in?
A. It was burning.

Mr. Drinker: That is all right.

Q. (By Mr. Warrum) The question is, did you hear him say anything with reference to the tipple being insured? If so, what was it?
A. Yes, sir. I asked him accidentally, I suppose, I said, "Mr. Willsey, have you any insurance on this property?" And he said, "Yes". He said, "It is insured."
Q. Was that said in the crowd?
3515 A. Yes, sir, right out just like I am talking here.
Q. Was anything else said?
A. He says, "Oh, yes", he says, "this is a benefit to the company." He says, "This mine is in a squeeze at the bottom." And he says, "That tipple is practically done." He says, "It is disabled", and he says, "It will have to be torn down and moved." He said, "All that is of any account is the slack washer"—or something like that there. He says,

"Now, you see, we will not have to go to the expense of tearing down that tipple, and we will also collect the insurance." That is the words he told me.

Mr. Warrum: That is all.

Cross Examination

By Mr. Drinker:

Q. How many people were there at the time and heard it?

A. I don't know how many heard it, but I would judge there was a dozen people standing there, and he talked just like I am talking now.

Q. Who? A. Mr. Willsey.

Q. Who were some of the other people that heard that?

A. I noticed Mr. Skow, the president or vice president of that Coal District Power Company. He was standing there looking after a transformer that was burning.

Q. Skow?

A. Mr. Skow. Mr. Herman Jeffries, the moving picture man, was standing there.

Q. Did he hear it?

3516 A. I don't know about that. I suppose he did.

Q. Who else?

A. Mr. Ferguson was standing there, the fellow that walked over there with me. I can't say who heard it, but I guess everyone did. Mr. Willsey, I guess, won't deny it himself.

Q. Did you testify at the former hearing of this case?

A. No, sir.

Q. You were a member of the United Mine Workers?

A. Yes, sir.

Q. Where did you live then? A. Huntington.

Q. Were you here at the other trial? A. No, sir.

Q. You were living at Huntington and belonged to the miners' organization? A. Yes, sir.

Q. Did you ever testify in any of the proceedings in this case?

A. No, sir, I never did. This is the first time I have been in court.

Q. What is Ferguson's first name? A. Jim.

Q. Jim? A. Yes, sir.

Q. Is he a member of the miners' organization?

A. I think he is now.

Q. Is that Skow the Huntington electric light man?

A. Yes, sir, that is what he does. He is vice presi-

3517 dent, I understand, of that company.

Q. And he was right there alongside of you?

A. He was right there. I noticed him in the crowd. He was looking after a transformer that was burning there.
Q. This other man you have mentioned as being there, is he a member of the miners' union? A. Who is that?
Q. Herman Jeffries.
A. He runs a picture show in Huntington.
Q. Did he then? A. Yes, sir.
Q. He was never a miner? A. Not that I know of.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness Excused.)

JIM FERGUSON, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. State your name to the court and jury.
A. Jim Ferguson.
Q. Where do you live? A. Huntington, Arkansas.
Q. Where did you live in 1914?
A. Huntington, Arkansas.
3518 Q. Are you a miner? A. Yes, sir.
Q. And you belong to the miners' union?
A. Yes, sir.
Q. And you did in 1914? A. Yes, sir.
Q. Do you remember the occasion when the Coronado tipple burned? A. I do.
Q. Where were you when you first heard or understood it was burning?
A. I was on the street, on the sidewalk in Huntington.
Q. What did you do after you heard that?
A. Mr. Wall came up and we talked about it and decided to walk out there.
Q. Did you walk out? A. We did.
Q. How many people were there when you got there?
A. There wasn't very many.
Q. Were there 20? A. I don't believe there was.
Q. Were there 10 or 12? A. Yes, sir, I think so.
Q. Did they mostly come from Huntington?
A. I only remember of seeing two from Huntington, except the one I went with. That was Mr. Skow and Mr. Jeffries.
Q. How far along was the fire when you got there?
A. The tipple and the slack washer had been burned down.

Q. They had burned down? A. Yes, sir.
3519 Q. How long did you stay there?
A. I suppose 30 or 40 minutes.
Q. Did the crowd remain around, or did some come and some go?
A. I am not certain whether Mr. Jeffries was there or not.
Q. Did you hear Mr. Willsey say anything with reference to the condition of the tipple?

Mr. Drinker: I object to that as a leading question. Let him ask what Mr. Willsey said, and not tell the witness what he said.

Mr. Warrum: I asked about the condition of the tipple, what he said about the condition of the tipple.

The Court: He may answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. State what you heard Mr. Willsey say with reference to the tipple burning.
A. Well, Mr. Wall asked him if it was insured, and he said that it was, and he said something, I don't remember just the words—it has been a long time ago, and I was not expecting to be no witness in the case, and I didn't give it a thought. He said something in regard to the shaft squeezing, and it would have to be renewed, and he said it was worth more money burnt than it was standing there.
Q. Were there other people standing there when he made that statement?
A. Mr. Skow was real close. Mr. Jeffries was right
3520 close, and Mr. Wall.
Q. Who is Mr. Jeffries?
A. Mr. Jeffries is a moving picture man in Huntington.

Mr. Warrum: That is all.

Cross Examination

By Mr. Drinker:
Q. The night before that did you hear rumors that the guards were coming to shoot up Huntington?
A. Well, I don't know.
Q. Did you hear it talked around there?
A. I heard someone or something in regard to that, but I don't remember.
Q. You heard some talk that the guards were going to shoot up Huntington or attack Huntington? A. Yes, sir.
Q. How far away was Huntington?

A. From Hartford?
Q. From Coronado? A. About 2 miles.
Q. Two miles? A. Probably a little further.
Q. Do you remember who told you the guards were coming to shoot up Huntington, or who you heard say it?
A. No, sir.
Q. But it was in the air, that they were coming over there?
A. Yes, sir.
Q. That was how long before this fire?
3521 A. I am not certain of that.
Q. Shortly before that?
A. I don't remember what night it was. It know there was some talk there some time.
Q. That they were coming to shoot up Huntington?
A. Yes, sir.
Q. Did you testify in this case before? A. I did not.
Q. You were a member of the miners' union then?
A. Yes, sir.
Q. And you knew then all you know now?
A. Yes, sir, I did.
Q. Where did you live in 1917, when this case was tried before?
A. I lived in Huntington. I have lived there since 1902.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness Excused.)

HERMAN W. JEFFRIES, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. State your name to the court and jury.
A. Herman W. Jeffries.
Q. Where do you live? A. Huntington.
Q. What is your business now?
A. Moving picture owner. I operate a show.
3522 Q. You have a show at Huntington? A. Yes, sir.
Q. What was your business in 1914?
A. Moving picture manager.
Q. Do you remember when the Coronado tipple burned in July, 1914? A. Yes, sir.
Q. When did you first hear of it burning?

A. I was in town on the street. I think it was phoned in. They said they phoned over that the Coronado tipple was afire.

Q. What did you do after you heard that with reference to going up there?

A. I had a horse and buggy at that time, and I got in the buggy with Mr. Skow and we went out.

Q. Mr. Skow went with you? A. Yes, sir.

Q. How soon did you get out there? What was the condition of the tipple when you got there?

A. The tipple was on fire. That washer was almost burned down, I guess, as well as I can remember. The engine house for the engine was burning.

Q. Was there a crowd or any people there?

A. I suppose there was 12 or 15 people there, as well as I remember.

Q. 12 or 15 people? A. Something like that.

Q. Was Mr. Willsey then present?

A. He came up just after we was there. Mr. Wall
3523 and Mr. Ferguson came up, and Mr. Willsey, I suppose the pit boss, he came up in 5 or 10 minutes after we got there.

Q. What did Mr. Willsey say with reference to the burning of the tipple?

A. I was standing next to Mr. Wall, about 3 or 4 feet from him, and Mr. Willsey was on the opposite of me and Mr. Wall. Mr. Wall asked him, "Have you insurance?" And he said, "Yes"; and he says, "We have got pretty good insurance on it." He said, "We will not have to move the tipple now."

Q. They would not have to move the tipple?

A. Yes, sir.

Mr. Warrum: That is all.

Cross Examination

By Mr. Drinker:

Q. You were living in Huntington in 1917? A. Yes, sir.

Q. Were you a witness in this case when it was tried before? A. No, sir.

Q. Your picture show was patronized practically solely by miners and their families, was it not?

A. By the community, farmers and everybody. Mansfield people come over. I run a real show.

Mr. Drinker: I am sorry I will not have time to see it. That is all, thank you.

The Court: Stand down.

(Witness Excused.)

Mr. Warrum: The defendants offer in evidence the
3524 constitution of District 21, without reading it.

The Court: It is part of the record, anyhow. It will be admitted.

(Said constitution of District 21, so offered and received in evidence, was marked by the reporter "Defendants' Exhibit No. 43", and is in words and figures following, to-wit:)

3525 Defendants Exhibit No. 43

Constitutions of the United Mine Workers

District Twenty-One
Adopted February 1914

International Constitution

Effective April 1, 1914.

3526 Constitution
District Twenty-One

United Mine Workers of America

Adopted February 1914

3527 Constitution United Mine Workers of America
District 21

Preamble

There is no truth more obvious than that without coal there could not have been such marvelous social and industrial progress as marks present day civilization.

Believing that those whose lot it is toil in the earth's recesses, surrounded by peculiar dangers and deprived of sunlight and pure air, producing the commodity which makes possible the world's progress, are entitled to protection and the full social value of their labor, we have formed the "United Mine Workers of America" for the purpose of establishing by lawful means the principles embraced in the body of this constitution.

Constitution

Article No. I

Name

This organization shall be known as the Twenty-first District of the U. M. W. of A. It shall not be committed to or favor any particular religious creed, neither shall affiliation herewith interefere with the religious or political freedom of its members.

3528 Article II.

Object.

First. The object of this union shall be to unite in one organization regardless of creed, color or nationality—all workmen eligible to membership employed in and around the coal mines, coke ovens and coal washers, for the purpose of obtaining the following as set forth:

Second: To increase the wages and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes.

Third: To demand that not more than eight hours from bank to bank in each twenty four hours shall be worked by members of our organization.

Fourth: To strive for a minimum wage scale for all members of our craft.

Fifth: To provide for the education of our children by lawfully prohibiting their employment until they have, at least, reached 16 years of age.

Sixth: To secure equitable statutory old age pension and workmen's compensation laws.

Seventh: To enforce existing just laws and to secure the repeal of those which are unjust.

Eighth: To secure by legislative enactment laws protecting the limbs, lives and health of our members establishing our rights to organize; prohibiting the use of deceptions to secure strike breakers; preventing the employment of privately armed guards during labor disputes; and such other legislation as will be beneficial to the members of our craft.

3529 Article III

Jurisdiction

Section 1. The jurisdiction of this district shall extend throughout the State of Arkansas, Oklahoma and Texas, and

all Local Unions shall be subject to the laws and rulings of the organization.

Sec. 2. In all questions of disputes, appeals and grievances affecting our members, (unless restricted by Joint Agreement) the decisions of the District Executive Board shall be final and binding until reversed by a District Convention or International Executive Board or inter-National Convention.

Article IV

Officers.

Section 1. The Officers of this District shall be one President, one Vice President, one Secretary-Treasurer; and four Executive Board Members who shall constitute the Executive Board; also a Board of Auditors consisting of three members.

Article V

Qualifications of Officers.

Section 1. Any member in good standing in the organization shall be eligible to hold office if he has been a member of the Local Union in the District one year preceeding the election and has had five consecutive years' experience in and around the coal mines prior to the election or has been under the employ of the U. M. W. of A. and has never been found guilty of misappropriating any of the organization's funds.

Sec. 2. No member shall hold two salaried offices in the District Organization at any one time or any affiliated
3530 union, except as delegate to the A. F. of L. convention.

Article VI

District Officers' Salaries.

Section 1. The President's salary shall be $111.10 per month and all legitimate expenses. The Vice President's salary shall be $105.26 per month and all legitimate expenses. The Secretary-Treasurer's salary shall be $111.10 per month and all legitimate expenses.

Sec. 2. The District Executive Board Members and Auditors shall receive $3.90 per day and all legitimate expenses when employed by the President to work for the organization.

Sec. 3. That in the event of the miners receiving any increase, the officers to receive the same.

Article VII

Duties of Officers.

Section 1. The President may preside over all regular and special conventions and meetings of the Executive Board and shall sign all official documents when satisfied of their correctness.

Sec. 2. He may, with the consent of the Executive Board, appoint such organizers and field workers as in his judgment may be required to serve the best interests of the organization, such appointees shall be bona fide members of the U. M. W. of A.

Sec. 3. He shall fill by appointment, all vacancies occuring in any of the elective officers with the consent of the Executive Board, providing such offices are declared vacant within nine months for date of general election. Otherwise he shall immediately order an election to fill such vacancy.

3531 Sec. 4. He may suspend or remove any officer for insubordination or for just and sufficient cause.

Sec. 5. He shall appoint from among the properly elected delegates to regular and special conventions the committees necessary to transact the work of the convention. Delegates shall be notified of their assignments on committees sufficiently early to enable them to meet at headquarters and be prepared to render a report on the first day the convention convenes. But if the convention is to consider charges regularly filed against the President, then the grievance committee shall be elected by the convention.

Sec. 6. He shall send out in circular form to all local unions six weeks prior to the District Convention such recommendations as he may deem wise to be acted upon by the convention, so delegates may obtain an expression from their constituents relative to the wisdom of such recommendations.

He shall file with the District Secretary-Treasurer, a copy of all written Joint Decisions and cause the same to be sent to all local unions.

Sec. 7. He shall devote his entire time and attention to the affairs of the organization, exercising general supervision over the same in the absence of Board meetings, and render a full and complete report of his work to the regular district Convention.

Q. Board Member for District 21?

[A]. Were you sent to the Hartford Valley in the summer of 1914 by the District Board? A. Yes, sir.

Q. For what purpose?

A. To preach to the miners or talk to the miners and
3447 induce them to remember the injunction.

Q. Did you have charge of the strike down there?

A. Yes, sir.

Q. For the District? A. Yes, sir.

Q. Did you learn that guns had been shipped into that valley by the Secretary of District 21, at any time in 1914?

A. Yes, sir.

Q. When did you learn it?

A. Along some time the latter part of June.

Q. What did you do with reference to that situation?

A. I took it up with President Stewart and demanded the guns be taken out of there, and he and I went together and insisted and demanded that Mr. Holt take those guns out of there.

Q. What was done after your demand?

A. Fred Holt went to Hartford and proceeded to gather them up and had them shipped back to McAlester.

Q. Did you, yourself, have any knowledge of Fred Holt's action in shipping the guns in there? A. I did not.

Q. Did you see these guns afterward?

A. After they had been shipped out?

Q. Yes. A. Yes.

Q. Whereabouts? A. McAlester.

Q. I will ask you, Mr. McLachlan, if you remember
3448 a telephone conversation you had with Judge Youmans?

A. Yes, sir.

Q. When was that?

A. On the night of the 15th of July.

Q. State to the jury the circumstances of that telephone conversation?

A. What led up to it or the conversation?

Q. Well, the situation that led you to the telephone, and what you did in telephoning him.

A. Some rumors had been going around Hartford for some time of the guards or gunmen at the Bache property being on the outside and shooting around and creating considerable disturbance, and on the night of the 15th there was a bunch of women and children and some old men came into Hartford, some of them in their night clothes and barefooted. I saw

those folks. It created quite a stir in that village. I went to Will Baker.

Q. Who was he?

A. Deputy sheriff under Lon Norris, or was at that time.

Q. What demand, if any, did you make on Baker, the deputy sheriff?

Q. I asked him to go out there and get enough men to keep the peace and protect those people at Frogtown.

Q. Without stating what he said, did you receive any advice or answer from Mr. Baker with reference to that request?

A. He said he could not go without orders from the sheriff.

Q. Did you call the sheriff up? A. I did.

Q. Where was the sheriff?

3449 A. He was in Greenwood.

Q. And you telephoned him? A. Yes, sir.

Q. Did you make the same request of him? A. Yes, sir.

Q. What response did he make to your request?

A. He said that owing to the injunction, and the construction put on the injunction, he could not have anything to do with that situation unless some depredations were committed.

Q. What did you do after that?

A. I called up Judge Youmans.

Q. And you had the telephone conversation Judge Joumans testified to? A. Yes, sir.

Q. Now, Mr. McLachlan, were you in Kansas City in April, 1914? A. Yes, sir.

Q. Just a word about this other matter first. Was this request that you made of the deputy sheriff, followed by the demand you made on the sheriff and your telephone conversation with Judge Youmans, a pretext or pretense on your part for the purpose of creating a situation that might justify an attack on the Bache-Denman mines?

A. Absolutely not. I had not thought of it myself until I got through talking with Norris.

Q. (By Mr. Drinker) Talking with who?

A. Lon Norris, sheriff of Sebastian County.

Q. (By Mr. Warrum) Was anyone at or about the

3450 telephone booth when you were talking with Judge Youmans?

A. Deputy sheriff Baker was standing just outside the door, and two old gentlemen, one named Thornton and the other one Obe Holden.

Q. What were you doing in Kansas City in April, 1914?

A. I was there on an investigation.

Q. The one that has been referred to here?

A. The one that has been referred to many times as the slush fund.

Q. Did it have anything to do with the Prairie Creek situation? A. Nothing whatever.

Q. Who was there?

A. Well, practically all of the district executive board was there.

Q. Was President White there?

A. President White was there.

Q. Was there any conversation that you heard between President White and any of the district officers or anyone else regarding the Prairie Creek situation? A. No, sir.

Q. Did it have any reference to the strike at Prairie Creek or the trouble at the Bache-Denman mines?

A. No, sir.

Q. Do you know James Mullen? A. Yes, sir.

Q. He is dead now, is he not? A. Yes, sir.

3451 Q. He lived in Midland? A. He lived in Midland.

Q. What position did he hold in 1914?

A. He was International Board Member.

Q. Did James Mullen, so far as you know, have anything to do with the Prairie Creek strike?

A. Nothing whatever.

Mr. Warrum: That is all.

Cross Examination

By Mr. Drinker:

Q. Mr. McLachlan, when you say International representative, do you mean International Board Member for district 21? A. No, sir.

Q. What is it?

A. Some term it organizer and some representative.

Q. You are International organizer? A. Yes, sir.

Q. How long have you been International organizer?

A. Since 1917.

Q. What were you before that?

A. For two years previous to that I was the national traveling auditor for District 21.

Q. And before that?

A. Before that I was board member for District 21.

Q. For how long?

A. I was elected board member for that district and taken that position the first of April, 1911.

3452 Q. And before that?

A. Before that I was a coal digger.

Q. You didn't hold any official position in the United Mine Workers before that time?

A. For about one year I held the position of financial secretary of a local union.

Q. How long have you been a member of the United Mine Workers? A. Since its inception.

Q. How is that? A. Since its origin.

Q. 1898? A. Yes, sir.

Q. When were you sent down to the Hartford valley to do what you have stated?

A. Immediately after I returned from Kansas City, after Bache had locked the miners out and abrogated his contract the first of April, 1914.

Q. You say that was not a strike down there?

A. No, sir, it was not a strike.

Q. What is a strike?

A. What we term a strike is where the men strike.

Q. You say that was not a strike at all?

A. Not as we term it, no, sir.

Q. When you say "as we term it," you mean as the term is used among the miners? A. Yes, sir.

Q. And [is] it is used in the constitution?

3453 A. Yes, sir.

Q. So that that was not a strike at all any of the time? A. That was a lockout.

Q. It was not a strike any of the time? That is, as I understand the word "strike," burning property is not a strike? A. Burning property?

Q. Yes.

Q. Yes. A. No, sir, that is not a strike.

Q. And intimidation of men is not a strike? A. No, sir.

Q. And injury to property is not a strike? A. No, sir.

Q. Those things have nothing to do with a strike?

A. Not as we term strikes.

Q. I am not quite clear as to exactly what you mean by a strike. I wish you would define strike as the Mine Workers understand it.

A. Well, a strike, as we understand it, is where the expiration of a contract the operator refuses to sign a contract, then we usually strike until we reach an agreement.

Q. If, during a contract, while it is going on, the operator should construe the contract in a way you did not think was proper and the men went out, that would be a strike, would it not?

A. If he violated his contract to the extent that the miners thought was of moment enough to use that extreme measure, they would strike.

Q. Then, as I understand it, in your use of the word, a strike is where the men working or engaged under a contract have refused to go on working, they considering they
3454 have a proper reason for that. Is that correct?

A. Why, I think so.

Q. You think so? A. Yes, sir.

Q. When the Bache-Denman Company started to employ non-union men at Prairie Creek then, under the rules of the United Mine Workers, no union man could work there with those non-union men. Is that correct?

A. I understood he didn't want any union men.

Q. Did you understand the question, Mr. McLachlan?

A. Yes, sir.

Mr. Drinker: Read the question to him.

(Question read to witness by reporter.)

Q. Now, will you answer that?

A. Yes, sir. They could not work with them.

Q. So it was not necessary to call any men out at any of those mines, to keep them from working there? A. No, sir.

Q. It was not necessary when Mr. Bache announced he was going to employ non-union men at Prairie Creek No. 4 for the district officers or anybody else to tell the union men not to work there? A. No, sir. He had done that.

Q. So that no action at all was necessary at all by the district or local officers in that connection? A. None whatever.

Q. You say you were sent down there to enforce the
3455 injunction, to keep the men from disobeying the injunction?

A. No, I didn't say I was sent down there to force the men.

Q. Not to force them, but to induce them to do that?

A. To talk that and preach that.

Q. When did you go down there?

A. As near as my memory serves me, along somewhere about the middle of April, maybe the 18th.

Q. And you [there] were there constantly throughout the whole trouble until after the battle? A. No, sir.

Q. Where were you?

A. I was attending to my other duties as a board member.

Q. At what times were you at Hartford or within ten miles of Prairie Creek No. 4 during that time?

A. Well, I couldn't answer that just exactly.

Q. I know you don't remember everywhere you went, but your best recollection.

A. I was in and out of there every day I didn't have business at some other mining camp.

Q. Were you up here the whole week during the convention?

A. I was here during the time of the convention. It didn't last a week, I don't think.

Q. Yes, it lasted from the 18th to the 23rd. A. 23rd?

Q. Yes. A. Well, I was here.

Q. You were here during all that time? A. Yes, sir.

3456 Q. Now, about these guns. How many guns did Holt send over there? A. I couldn't tell you that.

Q. How many did you see?

A. I saw two large boxes full.

Q. You don't know how many he sent in?

A. No, sir. The boxes were there in the office when I saw them.

Q. You got together all you could get and sent them back over to McAlester? A. No, I didn't. Mr. Holt did.

Q. Did he come over here and get them? A. Yes, sir.

Q. You told him to do that?

A. He was ordered by the president and the board.

Q. You say you didn't know anything at all about Holt shipping those guns here? A. That is correct.

Q. Did Stewart know anything about it?

A. Not that I know of. I don't know that.

Q. You don't know whether he did or not? A. No, sir.

Q. What did he say about that when you talked to him?

A. He was very much [exercised] over it and said they must be taken out.

Q. Did he tell you he didn't know anything about their having come here? A. Well, I don't recall that he did.

Q. What is your best recollection as to whether Ste-

3457 wart told you that he had known about Holt shipping these guns over here?

A. He didn't tell me. I don't believe he had any knowledge, because if he had I would have bawled Stewart out.

Q. You don't think Stewart knew anything about the shipment of those guns? A. I don't think he did.

Q. You don't think he did? A. No, sir.

Q. On what did you base your opinion that he didn't know anything about it?

A. He was present at the board meeting when I was instructed by the board to go to Hartford and look after that situation.

Q. Did he then say you must absolutely keep the peace and allow no violence or anything like that?

A. Yes, sir, those were my instructions from the board, and he was present. Mr. Holt was, too.

Q. Do you know who told Holt to get the guns?

A. No, sir.

Q. You don't know? A. No, sir.

Q. But your best opinion is that Stewart didn't know anything about Holt having bought the guns?

A. My best opinion in regard to those guns is that Fred Holt bought them of his own volition.

Q. If you saw Pete Stewart's name signed to the check paying for the guns, would that influence your opinion?

A. That he knew of their purchase?

3458 Q. Yes. A. No.

Q. It would not influence you at all? A. No.

Q. Or anything else? I withdraw that.

A. I can make a statement as to why it would not influence me.

Q. Make any statement you want to. Go ahead. Not a speech, but a statement.

A. I am not in the habit of making speeches.

Q. I know you are not, Mr. McLachlan.

A. In transacting the business of the district office all checks that were paid by that office were countersigned by the president; up until a few years back he would sign up a big bunch of those checks, so the office could carry on the business in his absence. They now have a stamp, a rubber stamp. The stenographer in the office as well as the Secretary-Treasurer—

Q. Never mind about that.

A. (Continuing)—has the authority to stamp the checks.

Q. You don't contend that that check was stamped at that time?

A. I contend that it was the usual procedure for a number of blank checks to be signed in the office ready for use.

Q. Where was Stewart in May, 1914? A. In May?

Q. Yes.

A. He was at the convention here, that I know of.

Q. He was here during May? Where was he before that time? A. Pete Stewart?

3459 Q. Yes.

A. He was a single man at that time, and he lived usually where his hat was. He had no home, to call it a home.

Q. He was in Ft. Smith off and on a good deal?

A. Yes, sir.
Q. He was here during the injunction hearing?
A. I couldn't answer that question. I think he was.
Q. You were here then?
A. I was here then, I believe, one day.
Q. That was the first week in May?
A. I couldn't be positive.
Q. Just your best recollection. Is it your best recollection that Stewart was here in May? A. I think he was.
Q. When did you all come back from Kansas City on that hearing? A. About the middle of April.
Q. About the same time you came back, everybody come back? A. When it adjourned.
Q. Then is when it adjourned? A. Yes, sir.
Q. And then, so far as you know, Stewart was off and on here in Ft. Smith from April 15th until after the strike?
A. His business naturally brought him up here occasionally.
Q. He was around here. Where was Holt all this time?
A. Principally at McAlester, I think.
Q. He was here at the injunction hearing?
A. I understood he was.
3460 Q. And he was here during that week when his case was being tried? A. Yes, sir.
Q. And he was off and on in Ft. Smith as his business called him during that time? A. As his business called him.
Q. Is that correct? A. Yes, sir.
Q. Now, going back to Kansas City and the first of April, you talked to Stewart and White and the rest of these people every day, did you not?
A. Well, I couldn't say every day, but practically every day.
Q. You were all there together on common business and saw a good deal of one another?
A. Yes, sir, there was quite a room full.
Q. When did you first hear about the riot on April 6th?
A. In a Kansas City newspaper.
Q. In a Kansas City newspaper? A. Yes, sir.
Q. Do you remember what the account said?
A. Well, I don't know that I would undertake to say just exactly what it said.
Q. Do you remember that it said the flag of the United Mine Workers was put on the tipple?
A. It may have. I wouldn't want to say.
Q. What is your best recollection?

A. There was quite a long article about it. That is
3461 quite a while to state what an article was.

Q. Of course it is. I am just asking for your best recollection.

A. It said they had a meeting out there and had some trouble with the guards.

Q. Did it say, in your best recollection, that the flag of the United Mine Workers was put on the tipple, and the mines had been idle ever since?

A. If my memory serves me, it either said that or I had heard that.

Q. Do you remember who said it to you? A. No, sir.

Q. Who was the first person that you remember, who knew about the facts, that told you anything about what happened down there?

A. Oh, well, I couldn't tell you that. It was common talk all through Sebastian County.

Q. Did you talk to anybody that knew about the facts before you got back to Hartford?

A. No, sir, I don't think I did.

Q. Nobody came up to Kansas City who had been down here to investigate it? A. Not to my knowledge.

Q. Do you remember when Pete Stewart and Jimmie Mullen went back from Kansas City to Ft. Smith on the 8th of April? A. On the 8th of April?

Q. Yes, two days after the riot.

A. If I remember, they came down here during that time; that is, Stewart came down.

Q. Do you remember that Stewart and Mullen left
3462 Kansas City on the 8th of April and came to Ft. Smith?

A. I don't remember of Mullen, but I do remember of Stewart.

Q. Do you know what they came here for? A. Yes sir.

Q. What?

A. Well, there was an application in the Federal court for an injunction, a temporary injunction, if my memory serves me right, and we had employed, or they had employed, and referred it to the board for ratification, a lawyer by the name of Dan Hogan to look after that.

Q. That was in this Bache-Denman matter?

A. That was right at the first of April when the announcement was made and they asked for an injunction.

Q. Right after the riot?

A. Long there some time. I couldn't state exact date. But Hogan stayed in Kansas City listening to the discussion in that court there, of that investigation, and Pete Stewart

came down here to employ Ben Cravens to represent the Mine Workers in that proceeding.

Q. To represent the Mine Workers in the proceeding the Bache-Denman Company were bringing for an injunction?

A. In the injunction proceeding.

Q. That was the injunction that was granted by Judge Trieber?

A. I couldn't tell you who the judge was. I didn't pay very much attention to it.

Q. Do you know the day that injunction was granted?

A. No, sir, I don't.

3463 Q. You don't know? A. No, sir.

Q. If you knew that was the 8th of April, and that was the same day Stewart left Kansas City, would that modify your opinion at all on that?

A. I know we had discussed the question of Hogan being there when he should have been here attending to our affairs in that litigation.

Q. Stewart came down on that injunction?

A. That is my understanding.

Q. When did he come back? A. I couldn't say.

Q. Don't you remember he got back a couple or three days after that?

A. I wouldn't say it was on the 8th. That is the only time I know of that he left Kansas City.

Q. He came back shortly after that? A. Sure.

Q. Did he tell you what he found out after he got back?

A. He employed Ben Cravens.

Q. Did he tell you what he employed him for?

A. To represent us in the injunction proceeding.

Q. Did he tell you what kind of a case you had and what had happened down there and what he figured the defense would be? A. No, sir, he didn't.

Q. You were the district board member for that particular district? A. No, sir.

3464 Q. Weren't you the district board member for the Arkansas district? A. No, sir.

Q. Was there any sub-district at that time?

A. No, sir, there was not.

Q. You were just district board member at large?

A. They were all elected at large at that time.

Q. Did your duties pertain particularly to any part of District 21?

A. I was stationed in Sebastian and Scott counties. Now, Mr. Drinker, these questions are coming fast. I believe I may be mistaken. I think they changed that in 1913 or 1912, along there somewhere. I wouldn't be positive.

Q. We will find out from the treasurer's report.
A. When I was first elected board member we were elected at large. The last time, I believe we had the sub-district.
Q. You were a sub-district board member of that particular sub-district?
A. I was sub-district board member of the Arkansas scale district.
Q. I don't remember myself whether that was that year or the next year, but we will find out in a minute.
A. I am not positive of that.

The Court: Will not the record show for itself?

Mr. Drinker: Yes, your Honor, but I want to check up on it before I go on.

Q. This is the report. This is No. 7, officers' reports
3465 from April 1st, 1914, to September 30th, 1914. I hand you page 13 and ask you to look at that and state whether you were board member for that sub-district for that period? A. Yes.
Q. Now, when Stewart got back to Kansas City did he go over with you the facts of what he found had happened here on April 6th? A. No.
Q. He didn't say anything to you about it?
A. No, he didn't, to my recollection.
Q. He didn't talk over with you in any way the facts he had ascertained on his visit to Ft. Smith as to what had happened on the 6th of April?
A. If he made any investigation in regard to that, I never heard of it and don't know anything about it.
Q. You are sure he didn't talk to you about it?
A. About the trouble at Prairie Creek and his investigation of the matter?
Q. Yes. A. No, he didn't.
Q. Who told you to go down there and take charge?
A. The Executive Board.
Q. When they told you to go, was that at a meeting of the executive board? A. To take charge?
Q. Yes. A. Yes.
Q. That was at a meeting of the executive board?
3466 A. Yes, sir.
Q. When was that meeting held?
A. Oh, along about the time we got back from Kansas City, I think, or immediately after we got back from Kansas City.
Q. The first two weeks in April?
A. After the injunction was issued.

Q. Did the board keep minutes of their meetings at that time?

A. They kept minutes of the meetings that they had, all formal meetings, all meetings of any moment, yes, sir.

Q. Do you know what became of those minutes?

A. They ought to be in the district office, I suppose, or here.

Q. As far as you know, they are still around?

A. I think so. I don't know.

Q. You don't know? A. No, sir.

Q. But there were minutes kept? A. Of the meetings?

Q. Yes. A. Yes, we kept minutes of the meetings.

Q. As far as you remember, it was at a district board meeting that you were delegated to go down there and take charge during the first two weeks in April?

A. The majority of the board were present.

Q. Was there some discussion about it?

A. Just some discussion of the situation.

Q. What did they say the situation was?

A. That there had been an injunction issued down there, and under the circumstances they didn't want any of our people violating that injunction, in any way, shape or form.

3467 Q. Well, did they say,—

A. Not in any way shape or form,—

Q. Did anybody say that they found out what actually happened down there and who had actually participated in that riot? A. We were not discussing the riot.

Q. That was over the dam, was it?

A. That was something that happened here while we were gone. We were not here.

Q. You were not interested in that?

A. We did not know anything about it, and did not make any investigation.

Q. Nobody made any investigation as to the actual facts?

A. I think the [country] officers did.

Q. Was your attorney there at this board meeting?

A. No, sir.

Q. He was not there? A. No, sir.

Q. Do you know,—who else was there besides Stewart that had anything to do with employing him, or discussing the facts with him? A. William Dalyrimple of Coalgate.

Q. He was in that board meeting?

A. I beg your pardon,—

Q. Was Mr. Dalrymple at that board meeting?

A. Let's see if I get you right, you asked who was present when they ordered Stewart to employ cravens?

Q. No, that is not it. Was anybody present at the
3468 board meeting here in April when they asked you to go down and take charge? A. Yes, sir.

Q. Besides the Board? A. No, sir.

Q. Nobody but the Board? A. No, sir.

Q. And who was on the Board?

A. William Dalrymple, Mike Tasso of McAlester, Gus Sparling of Texas,—I wouldn't say that Gus was present that day; Tom Sexton of Denning and Ed Cunningham of Bridgeport, Texas.

Q. He was Vice-President? A. Yes, sir.

Q. Was Cunningham in entire accord with the rest of the Board as to the way this Prairie Creek trouble was handled?

A. As to the way it should be handled?

Q. Yes? A. Yes, sir.

Q. There was no disagreement at all with him?

A. No, sir.

Q. He did not want to go a little milder than the rest of the Board?

A. He could not ask to go milder than the rest.

Q. You were all absolutely in favor of keeping the peace down there? A. Keeping within the law.

Q. The entire time? A. Yes, sir.

3469 Q. There was no time that any of you advocated anything but keeping the peace?

A. Never in my life, let alone then.

Q. And what if any steps did you take to endeavor to keep any of your boys, who might have had a little radical tendencies from making any trouble down there?

A. I talked to them continually, everyone I met.

Q. You thought that probably, if they were not restrained, they might hurt something?

A. I thought probably they might listen to some outsider.

Q. What outsider?

A. Oh, there is not a time when the mine workers have any trouble like that, that there is not outsiders working it up.

Q. By outsiders you mean outside,—

A. Outside of the organization, they are always there.

Q. Now, you don't contend that in the course of an industrial dispute between your organization and the operators, that there are not some members of the union that are hot headed, and make a little trouble once in a while, in spite of all you can do to stop them?

A. They are like all other classes of men, there are some hot heads, like some professional men.

Q. And we will include the lawyers? A. Yes, sir.

Q. So that you recognize, of course, that in any industrial conflict there is always a certain percent, whether five or ten or fifteen, whatever it is, we won't say, but there
3470 is always a certain percent who naturally are looking for a fight, and to stir things up on both sides?

A. You find that in all walks of life.

Q. You don't say that the miners as a rule are more pacifist than any other class of men?

A. They are not any more so, I wouldn't say.

Q. So you recognize that it might be possible that down there in Prairie Creek there were some members of the union who might have gone beyond what you would like for them to do down there in the way of beating up people, and so forth?

A. The first of April.

Q. The 6th of April, during that riot. You recognize that not having known anything about the facts, your knowledge of human nature would lead you to believe that it was possible that some members of the union might have made a little trouble down there.

A. I have my opinion that, like any other person that was not there.

Q. What is your opinion?

A. That there must have been somebody pretty hot headed when they started it.

Q. And you recognize, without having made any investigation or found out what the facts were, you recognize that somebody like Sandy Robinson, he was a pretty radical sort of a fellow?

A. If the rumors are true, most anybody would resent a man pushing a gun in his stomach.

Q. Did you hear the rumor that anybody pushed a
3471 gun in Sandy's stomach.

A. I don't know that. I don't know of anybody that would do that.

Q. Coming back to this proposition, you recognize that it was perfectly possible, without knowing any of the facts, that it was perfectly possible that some of your boys might have been a little [rought] down there?

A. It is quite possible that some of them might be a little [rought.]

Q. Did you make,—

A. It is possible some of [the] might have gotten a little rough, if imposed on too much.

Q. Even without being imposed on too much, some of them might have gotten a little rough?

A. Not if they were not imposed on.

Q. Your proposition is that if a man is a member of the United Mine Workers they would not start any trouble?

A. No, sir, that is not my proposition at all. My opinion of that is just simply this. There is not a class of men, of laboring men, another class of men that are easier to get along with than the miners, with respectable decent treatment.

Q. Now, what investigation did you make of the facts of the April 6th riot, to find out who had started the trouble?

A. I didn't make any investigation.

Q. You did not investigate that at all? A. No, sir.

Q. You did not take any steps to find out whether
3472 there were quite a few of the members of the union who were hot heads, who had gone beyond what they ought to have done? A. No, sir.

Q. You did not consider that it might have been conducive to order and peace and quiet, in case any of your people had gone a little beyond the point of propriety, if you would [dicipline] them or fine them, or put them out of membership? A. The law had taken that in hand.

Q. Which law?

A. I think if my memory serves me right there were eight or ten men tried for that.

Q. That was in July was it? A. No, sir.

Q. When was it?

A. In April, if my memory serves me right.

Q. Your memory is faulty. There were no particular people,—what are the facts, Mr. McDonough?

Mr. Warrum: Is Mr. McDonough testifying?

Q. Your position was that as far as any proceeding to deter hot heads from violence, that the law was sufficient, and that it was not necessary for the miners union to adopt anything at all to dissuade them from such action in the future?

A. The mine workers always try to induce the membership to comply with the laws of their organization and their contracts and don't interfere with law officers in enforcing the law.

Q. Of course they don't interfere with them, at least I won't admit that, but for the purpose of this discus-
3473 sion we may assume that; but what I am trying to find out is whether the miners union ever takes any steps, and particularly whether they took any steps here, to dis-

cipline, within their organization, and prevent any hot heads who may have been mixed up in the April 6th riot, from doing the same thing again?

A. We had no occasion to investigate the April 6th riot.

Q. And you did not? A. No, sir.

Q. But you often tell people not to be rough, and do any violence, but you never do anything tangible to stop them, is that correct?

A. I always take the position on the side of law and order myself.

Q. In talking,— A. As an officer and as a citizen.

Q. Yes, but can you tell me any action whatever that was ever taken by the United Mine Workers, districts, locals, international, or anybody else in connection with the occurrence at Prairie Creek from April to July to discipline, to fine them or suspend them on account of any violence that they did in this strike. Can you tell me any one thing except [alking]?

A. That was a community uprising, composed of farmers, doctors, lawyers, preachers,—

Q. Please answer the question?

A. I am going to answer it.

Q. Can you answer it yes or no, and then go on with your explanation? Can you tell me anything that you did?

3474 Mr. Warrum: That question cannot be answered yes or no.

(Question read by the reporter).

Q. Now, can you tell me that?

A. By answering yes or no?

Q. Yes, and then go on?

A. I cannot answer it that way, for this reason, if you will allow me.

Q. Certainly I will allow you to make your explanation now, but I will get an answer to that question before I stop.

A. My information, not being present, was that both of these meetings were composed of the community, lawyers, doctors, preachers, and so forth.

Q. We have heard your testimony on your side on that score?

A. Yes, sir, and it is all hearsay with me, I don't know that there was a mine worker out there.

Q. Now, do you think there was not one out there?

A. Oh, it is not a question of thinking now. It is a question of what I know.

Q. Do you know there were no mine workers in that whole gang? A. I do not know that there was or was not.

Q. What is your best opinion,—who do you think burned up the Bache mines?

A. You want what I think about it?

Q. Who do you think, what is your best opinion as to who burned up the Bache mines?

Mr. Warrum: Of course that is not competent.

A. I could not say who burned them up.

3475 Q. You don't know? A. No, certainly I don't.

Q. Do you think that the union did it?

A. I don't think that the union burned up the mines, no, sir.

Q. Do you think that the mines were burned up at the instigation of the United Mine Workers?

A. No, sir, I know they were not burned up at the instigation of the United Mine Workers.

Q. Do you think the mines were burned up as a result of an uprising of the community at that time? Is that your best opinion from all the facts that you have obtained?

A. Would I be permitted to ask you a question, Mr. Drinker.

Q. I am supposed to be asking the question?

A. I know you are.

Q. I want to ask you whether from all of the facts that you have ascertained, and all the testimony and everything that you have heard here, whether it is your opinion that the Bache mines were burned up by an uprising of the community?

A. I think they were burned up during that uprising.

Q. As the result of it, is that right?

A. I don't know whether it was the result of the uprising or the connivance of someone else.

Q. Now, I have to come back to the question now. Will you please tell me what if any steps you ever heard of being taken by the United Mine Workers or any branch or officers of it, to discipline, within the organization, any member for participation in the riot of April 6th, the event be-

3476 tween April 6th and July 17th, and the battle on July 17th?

A. I never heard of any charges being preferred against any mine worker for [participateing] in either of those that you have mentioned.

Q. Still you have not answered the question?

A. And I don't know of any steps being taken.

Q. Now, we have it.

The Court: Is that all?

Mr. Drinker: No, your Honor.

Q. (By Mr. Drinker) Now, if I should show you Mr. Stewart's expense account for April, 1914, the first half of April, 1914, and show you that it shows an item on April 8th, railroad fare Kansas City to Fort Smith, and on April 10th railroad fare Ft. Smith to Kansas City, would that refresh your recollection as to when Stewart came down from Kansas City, and enable you to say that you remember his being here?

Mr. Warrum: I object to that,—

The Court: I have no doubt that that would tend to show that he came here on the 8th and went back on the 10th.

Q. Do you remember, after you saw that, how soon Stewart came back after he came down here?

A. No, I do not.

Q. You know he came back in a few days?

A. I know he came down and came back.

Q. Do you remember whether Mullens came with him?

A. No, sir.

Q. Were you present at any conference or discussion
3477 where White was this, and you and Stewart were there, after April 10th at Kansas City until you came back on the 15th? A. No, sir.

Q. Did you see White after that?

A. I seen him there practically every day.

Q. You saw him with Stewart?

A. We were all in the court room; I guess there must have been forty or fifty people there.

Q. And you would see him before and after court, both of them? A. Very seldom.

Q. Did you see Stewart and White together?

A. We were all in the court room together at the same time; I never seen them go outside of there or have any meeting or any discussion; I don't know that I ever seen them together, but I may have seen them walking along the street.

Q. And you say that during the balance of the time you were there, you never talked to Stewart about what happened in Prairie Creek on April the 6th, or you never talked to White, or heard Stewart talk to White about that?

A. No, sir.

Mr. Warrum: He has gone over that several times.

The Court: Yes.

Q. Now, you were at the injunction proceeding were you?
A. I could not say positively, I believe I was here one day.
Q. Now, during the Holt convention, May 18th to the 23rd, did you see White frequently there?
A. Yes, sir.
3478 Q. Stewart saw him frequently?
A. Yes, sir, he was there.
Q. You had been down at Hartford for about a month then, in charge? A. I was in there off and on.
Q. You had been in charge for about a month?
A. Yes, sir.
Q. And you saw White frequently during the week of the 18th? A. Yes, sir.
Q. And you and Stewart and he would sometimes get together, all three of you?
A. Not any more than being in the convention hall at the same time.
Q. And outside?
A. No, sir, I don't believe I was in John's,—Mr. White's company outside, unless it was walking to the convention hall along with the rest of the boys down the sidewalk.
Q. Did you all stay at the same hotel? A. No, sir.
Q. What hotel did White stay at?
A. I think he stayed at the Goldman, I could not be positive; I rather think he did.
Q. Why do you think he stayed there?
A. He usually always stays there.
Q. And Stewart, where did Stewart live at that time?
A. Live.
Q. Yes, where did he stay?
3479 A. He was staying at what was known then as the Hrny Hotel, down here on Fifth Street.
Q. Are you sure of that?
A. That is where he usually made his home when he was here.
Q. Now, during that convention did you discuss the events that had happened at Prairie Creek since the First of April, with anybody?
A. Not to my knowledge, any more than just common public talk.
Q. When was the injunction made permanent?
A. I can't tell you the date of that, the record will show.
Q. If it was the 8th, if I stated to you that it was the 8th of May, would that be substantially in accordance with your opinion and recollection? A. The record would show it.

Q. It was the 8th of May. Now, when Mr. White came down to Ft. Smith, did he know that the injunction had been granted? A. I couldn't tell you that.

Q. Did you tell him that it had been? A I did not.

Q. Did you not tell him he had better be careful not to say anything about Prairie Creek on account of the injunction?

A. No, sir, I did not.

Q. You did not tell him there had been an injunction granted?

A. I never talked about injunctions with Mr. White.

Q. You did not hear anybody else tell him there had been an injunction granted? A. No, sir, I did not.

3480 Q. You don't know whether others did?

A. I don't know whether they did or not, but I did not hear them, and I never told him.

Q. And to what extent did you discuss the Prairie Creek situation with the other officers of the union during that convention, much or little? A. During that convention?

Q. Yes.

A. I never discussed it with any of them. We had other things to talk about.

Q. You never mentioned it to anybody?

A. Not to my knowledge.

Q. Do you mean that you don't remember, or you did not?

A. I remember that I did not talk about it at that convention.

Q. You remember that you did not talk about it?

A. I did not.

Q. Did you hear Stewart and White talk about it?

A. No, sir.

Q. Did you hear Stewart talk about it to anybody?

A. No, sir.

Q. During this three months period did you talk to Stewart about the situation in Prairie Creek?

A. About the situation in regard to what?

Q. In regard to how much water the Bache people were getting out, and how soon they would be ready to ship coal, and how many employees they were getting in there?

A. I did not.

3481 Q. You did not talk to Stewart?

A. I did not because I could not. I had never been inside of the rope.

Q. Did you have any talks with Jim Slankard during this time? A. No, sir.

Q. Or Jim McNamara?

A. About the Prairie Creek situation?

Q. Yes.
A. Not any more than with every other citizen in that valley.
Q. How much talk did you have with other citizens in that valley about Prairie Creek?
A. If the question came up I talked about the injunction, and that we must live within the bounds of that injunction, and that as far as I was concerned it was not bothering us, and to leave Bache alone.
Q. As far as who was concerned? A. Bache.
Q. That he was not bothering you any? A. No, sir.
Q. And didn't bother you at all, whether he would get his mine started or not? A. It didn't bother me at all.
Q. It would not have interested you if he got his mine shipping coal? A. Not very much.
Q. The most that it could have interested [you],—how much would you have been interested?
3482 A. Well, Mr. Drinker, in answering that question, I want to say that the class of men [hat] he had obtained, usually follow that line of work, and they are not a success to anybody.
Q. You were interested that Bache should make a success, and therefore you were sorry he had those people there?
A. The more men of that kind he got, the sooner he would retire.

Mr. Warrum: I object to this testimony, it is not cross examination.

The Court: Objection sustained.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

Q. Was there no reason why you, as a union man, did not want Bache to get shipping coal?

Mr. Warrum: We renew our objection.

The Court: Objection sustained.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

Q. Did you know Clint Burris?
A. I seen him a number of times.
Q. And Sandy Robinson? A. Yes, sir.
Q. And Ves Howard?
A. They had a family of Howards out there, two or three boys, I don't know them by their given names.

Q. Charlie Pattie? A. Yes, sir.

3483 Q. Did you ever talk to any of them about the situation at Prairie Creek, and as to how Bache was getting along, and how soon he would be able to ship coal?

A. No, sir.

Q. Did Paul Little have anything to do with your calling up Judge Youmans? A. Paul Little?

Q. Yes?

A. No, sir, he had nothing to do with my calling up Judge Youmans, any more than this, I seen that deputy sheriff, and asked him to go out, and he said, "I will go if I get word from the boss". I took him up to the telephone office and called Lon Norris, the sheriff, and then I called Judge Little and asked him to use his influence with Norris. He also said that the injunction covered him as well as the rest of the people in that valley, and then I called up Judge Youmans.

Q. You did? A. I did not slight any of them.

Q. You did talk to Paul Little, and he was not a judge then? A. I believe he was.

Q. But he was made Judge later?

A. I believe he was a judge, later possibly. I am not positive of that.

Q. Was he not made judge shortly after this battle?

A. He was elected that year sometime I suppose.

Q. Later in the year?

A. I am not positive of that.

3484 Q. Was he elected in the fall and went into office the first of January, 1915?

A. Whenever the election was.

Q. But you did talk to him before you called up Judge Youmans? A. I did, yes, sir.

Q. When did you first know that the marshals had been withdrawn?

A. My first information I believe I got from Judge Youmans.

Q. You found that out when you talked to him?

A. That they were all out of there.

Q. And that was two days before the battle?

A. That was on the evening of the 15th, the night of the 15th.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness [excused])

Mr. Warrum: We read from the record of the former trial, page 2592, an exhibit introduced in that trial.

"American Express Company, 7/3/14.
Hartford, Arkansas.

Received from O. Layton subject to the classification of tariff on date hereof, 16 bx's small arms and amu, consigned to F. W. Holt, McAlester, Oklahoma, which the company agrees to carry upon the following terms and conditions, to which the shipper agrees, and which is evidenced by this receipt." I will omit the conditions printed on the receipt in small letters, because it doesn't pertain to this case.

(Signed H. H. MARTIN."

3485 Mr. Warrum: We offer the testimony at the former trial of E. MARIANELLI, called as a witness on behalf of the defendants, found on page 3015.

"Direct Examination

By Mr. Grant:

Q. What is your name? A. E. Marianelli.

Q. Where do you live? A. At McAlester, Oklahoma.

Q. How long have you lived there?

A. I have lived there from,—well, it depends. I moved there about in April, but my office was not moved there,—

Q. (Interrupting). I mean when you landed in McAlester? A. About July.

Q. Of what year? A. 1914.

Q. Were you in McAlester on the 17th of July, 1914?

A. Yes, sir.

Q. How far is your office from the office of the United Mine Workers?

A. Right on the same floor and on the side of the office of the United Mine Workers of America.

Q. Were you in the office of the United Mine Workers of America on the 17th of July, 1914? A. Yes, sir.

Q. That is the United Mine [Woekers] of America,
3486 District 21, their office? A. Yes.

Q. Did you see Fred Holt there that day?

A. Yes, sir.

Q. Did you see any boxes of guns there? A. Yes.

Q. What, if anything, called your attention to the guns, Mr. Marianelli?

A. Well, I went into the office, the executive office of the United Mine Workers, and was talking to Mr. Tasso, the Italian Board Member, and while I was talking to him, Mr. Holt came in and made the remark the trouble was going on

and he said, "I will get the blame for that and it is a good thing the guns are here", and pointed to them stacked up along the wall.

Mr. Covington: Take the witness."

Mr. Lucas: We offer the cross-examination.

"Cross examination

By Mr. McDonough:

Q. Did you see the guns?

A. I saw the boxes that were marked firearms.

Q. I did not ask you that. Did you open the boxes and examine to see that the guns were in them?

A. I saw that one of the boxes were open and saw some shells.

Q. And all you know about it then is what you say that Holt said, that he would be blamed for that and it was a good thing the guns were there? A. Yes.

Q. And he motioned to some boxes, and that is all you
3487 saw? A. Yes.

Q. What is your business?

A. I am a lawyer, I was just starting in there.

Q. You were talking with the Italian Board member?

A. Yes.

Q. Did you speak to him in Italian?

A. No, in English.

Q. What time of day was that?

A. It was in the morning. I remember distinctly I was painting my own [side] on the outside of the office on the door.

Q. Early in the morning?

A. Not very early, I got down late.

Q. About what time in the morning was it, to your best judgment?

A. About ten or eleven o'clock. It was before the noon hour.

Q. Ten or eleven is your best judgment about it?

A. Yes.

Q. You got down earlier than that to your office, didn't you?

A. Yes, I had already been there and was painting my sign on the door. My office furniture had arrived just three days before that.

Mr. McDonough: That is all.

(Witness excused.)"

P. L. HARRISON, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

3488 Q. State your name to the court and jury?
A. P. L. Harrison.
Q. Where do you live? A. Muskogee.
Q. Where did you live in 1914?
A. I lived in Ft. Smith.
Q. What do you do now? A. Railroad conductor.
Q. On what railroad? A. The Midland Valley.
Q. What were you doing in 1914?
A. Running a train known as the "Polly" on the Midland Valley between Ft. Smith and Hartford.
Q. That is a combination freight and passenger train?
A. Combination freight and passenger.
Q. Did you haul goods,—do you remember the summer of 1914, when Mr. Bache was operating a mine at Prairie Creek, No. 4, open shop?
A. I was running a train during that time.
Q. Did men come down there from time to time and get off and go to the camp? Did you ever see any armed guards, —where was your train stopped to deliver expressage and freight and stuff for Mr. Bache's mine?
A. They would stop at Prairie Creek, with the exception of one time I did stop at a crossing, I think about half a mile north of Prairie Creek, there opposite No. 4 mine, and unloaded.

Q. Was there a depot or station there?
3489 A. Not at that crossing there was not.
Q. At the other place?
A. Yes, sir, there was a platform and shed.
Q. How often during the months of May, June and the first part of July, did you stop there and deliver things to the people at this mine?
A. Why, every day, sir; we had something to unload every day.
Q. Who would receive the shipment of supplies?
A. The parties I suppose that the billing called for, different ones.
Q. Now, when they were unloaded and delivered, were they delivered by you or your baggage man or express man, taking receipts on the spot for it, and turning the stuff over to them?

A. All freight was put off there, this being a blind siding where there was no agent, each man would have to sign for each article or each package that was shipped to him.

Q. And the receipts were taken by the officers of the train?

A. By me.

Q. Now, did you during the period that I have mentioned, May, June and the first part of July, deliver any shipments of liquor to armed guards at the Bache-Denman mines?

A. I can only say this that I delivered beer and whiskey and different articles to everybody that I supposed that they belonged to.

Q. Among those that you made deliveries to, were any of them employees or guards at the Bache-Denman mines?

A. That I could not say, sir, but I have delivered
3490 packages of beer and whiskey and other articles there to men that had arms, guns and pistols.

Q. Would they have pistols strapped on them?

A. Yes, sir.

Q. And guns in their hands? A. Yes, sir.

Q. And were they the same men that would come from time to time to receive supplies of food? A. Yes, sir.

Q. How often did that occur?

A. It would occur I suppose very nearly every day.

Cross-Examination

By Mr. Drinker:

Q. Do you know whether those people were United States Marshals that were down there?

A. All that I know sir, is that they were strangers to me in a way, because I knew virtually,—I had been there for three or four years, and I knew everyones face, if not his name.

Q. Did you hear somebody say at the time that they were United States marshals?

A. I have asked the people there if they knew they were the right parties, and they said they were guards at the mine.

Q. You did not hear [they] say they were United States marshals?

A. All I know is that men would step up there, I did not do it every time, it attracted my attention first, and they would sign for this, and I didn't know they were United States marshals or who they were, but I knew they
3491 were men that signed, that had guns and winchesters.

Q. Did you ever hear anybody say at the time that they were United States marshals, at the time you described, or any other time?

A. No, sir, I only heard them say they were guards, was the only expression I heard made.
Q. You belong to the railroad order?
A. I belong to the Order of Railway Conductors.
Q. And did at the time?
A. I have always belonged to it since I was eligible.

(Witness excused).

MRS. CHARLEY GOODIN, called as a witness on behalf of defendants being first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. State your name to the court and jury?
A. Mrs. Charles Goodin.
Q. Where do you live?
A. Two miles east of Hartford.
Q. Now? A. Yes, sir.
Q. Where did you live in the summer of 1914?
A. I lived directly in Frogtown.
Q. In Frogtown? A. Yes, sir.
Q. Do you recall the night of the day when Frogtown was shot up, in July, when there was some shooting in town or about the town?
3492 A. I can't remember the date, but I do remember the month, I think it was in July.
Q. You remember when the big battle occurred?
A. I heard of it.
Q. How long before the big battle was it that this town of Frogtown had the experience that I have referred to?
A. It was on Sunday night.
Q. The Sunday night before? A. Yes, sir.
Q. Now, were you married?
A. I am a widow woman, and I was then.
Q. Did you have any children? A. Three.
Q. How old were they?
A. I think the youngest boy was about thirteen and the other about twenty.
Q. Was the youngest one living with you?
A. Yes, sir.
Q. And the oldest one was a coal miner, was he?
A. Yes, sir.
Q. Now, state to the jury the circumstances about this shooting, when it occurred, and what you did, if anything?
A. Well, it was on Sunday night, and I heard shooting; I was in bed, and I heard them shoot, and I jumped up and

ran out on the front porch, and as I got out on the front porch I heard some shots, you know, and they just whistled through the air z-z-z-z-z, like that. It scared me so bad, you
3493 know, that I ran right out of the gate, into a big ditch, and the little fellow followed me. The other one was so excited he didn't know what to do, and the little one followed me and I crawled through that ditch, and through the sewer, and over into John Peterson's cellar, and I stayed there for the night, me and the boy.

Q. You testified in the former trial of this case, did you not? A. Yes, sir.

Q. I hand you defendant's Exhibit 42, and ask you if that is a picture of the house you went to? A. Yes, sir.

Q. And the sewer through which you crawled?

A. Yes, sir, but the ditch is not there.

Q. It is not there now? A. I don't see the ditch.

Q. The ditch is not shown in the picture?

A. No, sir. Now, listen, when I was shown that house before, I had no glasses and I couldn't distinguish it quite, and I told him it looked just like it, but that is the place.

Q. Now, did any of your children follow you?

A. That boy.

Q. And you crawled through there? A. Yes, sir.

Q. And went to Mr. Peterson's house?

A. Yes, sir, through the sewer, and through the gate, and around to the back of the house and into the cellar; the cellar was in the back of the house.

Q. And you stayed there all night?

3494 A. I certainly did.

Cross Examination

By Mr. Drinker:

Q. At what time Sunday evening was this?

A. It must have happened about ten, or a little after, between that and 12:00 o'clock.

Q. And nobody was hurt by the bullets?

A. I don't guess there was, I never heard of anybody, but I was terribly scared.

Q. And the bullets went over the top of the house?

A. No, sir, they shot right in between my house and the house next, and cut the limbs off the little peach tree.

Q. You saw that the next morning?

A. I saw it the next morning, but I heard it that night; I heard that bullet go z-z-z-z-z, right through,—I well remember it.

Q. Sure you do? A. Sure.

(Witness excused).

3495 (Defendants' Exhibit 42, Photograph of House.)

3496 Miss Connie Dowdy, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. Just state your name to the court and jury?

A. Connie Dowdy.

Q. Where do you live? A. Bonanza, at the present.

3497 Q. What is your business? A. Teacher.

Q. What were you doing in 1914?

A. Teaching school at Central Point.

Q. Was that in or near Frogtown?

A. I was boarding there at the time.

Q. With whom? A. J. W. Anderson.

Q. Any small children in the family? A. Two.

Q. Where was the school with reference to Frogtown?

A. About three quarters of a mile.

Q. Right back of Frogtown, and across a swale?

A. Across the creek.

Q. State to the jury what you knew, if anything, about shooting occurring in that vicinity while you were teaching school?

A. Oh, when school first began there was some trouble, disturbance in and around Frogtown, and of course everyone was highly excited there that had children going to school, and the parents were afraid for them to go by themselves. I went with those children, and made it my business to go with them each morning, and back at night, and several days the week of the 17th, the parents of these children came to the school house to walk back through the wooded territory with us; they were afraid for us to come back by ourselves. The shooting at night, I believe it was Sunday night before the trouble, that Frogtown was shot up.

Q. Where did you go that night?

3498 A. To the cellar.

Q. Did the children go down there too?

A. The entire family went.

Mr. Warrum: That is all.

Cross Examination

By Mr. Drinker:

Q. You say school closed on the 17th of April?

A. I don't remember when school closed in the spring, but it was going on the 17th of July. There was no school on the 17th, but school was supposed to be in session at that time.

Q. When did it start?
A. Either the first or second Monday in July, I don't remember which.

(Witness excused).

L. SCHMIDT, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. State your name to the court and jury?
A. L. Schmidt.
Q. Where do you live?
A. I live in Huntington now.
Q. Where did you live in 1914? A. I lived at Arcoal.
Q. How far from the Coronado mines?
A. About 150 [years].
Q. And how far from Mr. Willsley's house?
3499 A. About 200 [yeards].
Q. Who is Mr. Willsley? A. He was the mine boss.
Q. In charge of Coronado? A. Yes, sir.
Q. Do you remember when the fire at Coronado took place?
A. Yes, sir.
Q. What day was that?
A. It was some time after No. 4 fire, I don't recollect what day.
Q. When did you see the fire starting?
A. I was in the house there, and I heard Mr. Willsey holler, "The tipple is afire".
Q. And what did you do?
A. And I ran down, and me and Mr. Willsey and his son met right at the barn, at the stable. He came around that way, and I came down straight, and he said, "The tipple is afire", and we all ran up there. We went up, I don't know how fast.
Q. Who was with you? A. Mr. Miller.
Q. Is he your son-in-law? A. Yes, sir.
Q. You are a United Mine Worker? A. Yes, sir.
Q. And he is a union miner? A. Yes, sir.
Q. What did you say to Mr. Willsey with reference
3500 to the fire when you got there?
A. I never said nothing.
Q. What was said?
A. Mr. Miller, he said, "We are here to put it out if you want us to".

Q. Could it have been put out?
A. Yes, sir, it could have been put out, and he said, "No, let it go, it is insured".
Q. What time of day was that?
A. That was between 11 and 12 o'clock.
Q. You tesitfied in the former trial? A. Yes, sir.

Cross Examination

By Mr. Drinker:
Q. You testified in the former trial? A. Yes, sir.
Q. Now, some time after this fire, about a week after, did somebody ask you to sign an affidavit that Mr. Willsey burned the tipple? A. No, sir.
Q. They did not? A. No, sir.
Q. Are you sure of that?
A. There was nothing said about that.
Q. Did you hear of any affidavit that you were asked to sign about that, by any union miner? A. Yes, sir.
3501 Q. Did some union man ask you to sign an affidavit?
A. Some man came to me and told me to go to Midland and sign an affidavit, and I went down with them; I didn't know what it was about.
Q. Did that affidavit say, "Me and Mr. Willsey met there together, and Will Miller, and we went to put the fire out, and he said, 'No, let it go, it was well insured' "?
A. Yes, sir.
Q. You were asked to sign that? A. Yes, sir.
Q. Did you sign it? A. Yes, sir.
Q. Who asked you to sign it?
A. The labor commissioner was there.
Q. Who was he?
A. One of them was McKinley and the other,—
Q. Cleary? A. Cleary was his deputy.
Q. Shaw was there? A. It was at Shaw's house.
Q. Was McCann there? A. I don't know.
Q. Was McCann there? A. I can't tell you.
Q. Was Shaw a miner? A. One Shaw was a miner.
3502 Q. A union miner? A. Yes, sir.
Q. Did you know anything about anybody else that signed an affidavit at that time?
A. Oh, there were several of them.
Q. Doc. Jones? A. I think it was Doc. Jones.
Q. Did Doc Jones sign the same affidavit that you did?
A. I don't know whether he did or not, but I expect he has.
Q. Did you say anything in the affidavit about Wilsey having set the mine on fire? A. No, sir.

Q. He didn't set it on fire? A. I don't know.
Q. As far as you know? A. No, I don't know.

(Witness excused).

Mr. Warrum: We offer to read the testimony of DR. D. B. BUTLER, taken at the former trial, found on page 2671 of the record.

"Direct Examination

By Mr. Covington:

"Q. State your name? A. Dr. Butler.
Q. What are your initials? A. V. V.
Q. Where do you live, Doctor? A. Huntington.
3503 Q. How long have you lived in Huntington?
A. 11 years.
Q. Do you remember the day that the Coronado mine burned in 1914 in July? A. Yes, sir.
Q. Were you by there that day? A. Yes, sir.
Q. Tell the jury what you saw, Doctor, as you were passing there,—who was with you, first?
A. My wife and I were going over to Arkoal, and I had a couple of patients over there, and the road crosses the railroad track above the mine, and I happened to be looking down that way and I saw a little light under the tipple, and so I stopped and told my wife, I said,—I said, "The Coronado will be afire the first thing we know", and we stood there and watched it a few minutes, and we saw it kept getting larger and larger, and then we drove on up to the [story] there, just a short distance. There were three or four men sitting on the porch, and I told them, I said, "Coronado is afire, you had better go down there and put it out", and they went around and looked and couldn't see no smoke, or anything, and then they went on down there, or I suppose they did; and my wife and I went on to visit the patients, and when we came back the whole mine was afire, the whole tipple.
Q. At the time you saw it, you say it was a small light under the tipple, or elevator, or whatever it is?
A. Yes, sir, it was right under the chute.
3504 Q. Now, did you see anybody about the mine, coming away from there, crossing the field, or anybody about there at all? A. No, sir."

Mr. Lucas: (Reading).

Cross-Examination

By Mr. McDonough:

Q. Doctor, what direction were you going?

A. I was going north.

Q. And does the road running nearby Coronado mine, is that the one that you were on? A. Yes, sir.

Q. Is it a public county road along there?

A. No, sir, it is not a public country road.

Q. Did you cross the creek about the time you got in Coronado or just before? A. Just before.

Q. And how far were you from Coronado when you first saw this light?

A. Oh, I suppose it is three or four hundred yards from where I first saw the light from the road to the tipple.

Q. What time of day was it, Doctor?

A. It was about noon.

Q. You were traveling north, you say? A. Yes, sir.

Q. You then went on your journey, but you stopped by the store, you say? A. Yes, sir.

Q. How far is the store from the mine?

3505 A. Well, the store,—[its] about a couple of hundred yards from the crossing to the store.

Q. A couple of hundred yards further away than when you first saw it? A. Yes, sir.

Q. And when you get up there you couldn't see any smoke?

A. No, sir.

Q. Could you see the tipple from the store? A. Yes, sir.

Q. And you saw no smoke? A. No, sir.

Q. It was some three or four hundred yards away, at that point? A. Yes, sir.

Q. You know who the men were at the store that you spoke to? A. No, sir.

Q. You didn't know any of them?

A. Well, I knew them, of course, but I don't remember now who they were.

Q. You mentioned to them something about it, did you, there? A. Yes, sir.

Q. And all of you looked down there and didn't see anything at all? A. I did not.

Q. Didn't see any smoke? A. No, sir.

Q. Or didn't see any fire? A. No, sir.

3506 Q. And you went on your journey then?

A. Yes, sir.

Q. And when you came back, how long had you been away when you came back?

A. I guess 15 or 20 minutes, maybe a half hour.

Q. And when you came back the whole tipple was on fire?
A. Yes, sir.
Q. Where did you say the small blaze was when you first saw it? A. It was right under the chute.
Q. Can you show us, is that a picture of the tipple that is before you? A. It looks like it.
Q. Referring to plaintiffs Exhibit 69, is that the tipple, do you recognize that as a picture of the tipple?
A. I don't know whether that is the tipple or not.
Q. You are not able to locate the blaze on that, are you?
A. May I step down here?
Q. Yes.
A. I saw the fire, the blaze, it was right under here, under this chute.
Q. You recognize that now as the tipple, or a picture of the tipple? A. It looks like it.
Q. It was under the coal chute when you first saw it?
A. Yes, sir, right about there (Witness indicating).
Q. How far is Coronado from Huntington where you
3507 live? A. Two and a half miles.

(Witness excused.)

WILL MILLER, called as a witness on behalf of defendants being first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. State your name to the court and jury?
A. Will Miller is my name.
Q. Where do you live, Mr. Miller?
A. I am living in Huntington, right at the present time, my family is there.
Q. Where did you live in 1914? A. In Huntington.
Q. You were a coal miner? A. Yes, sir.
Q. And belong to the union? A. Yes, sir.
Q. Do you remember the day that the Coronado tipple burned? A. I do.
Q. Were you at your father-in-law's house at that time?
A. I was.
Q. What was his name? A. Schmidt.
Q. Did you testify at the former trial of this case?
A. I did.
Q. Tell the jury what occurred when your attention was drawn to the fire at the tipple, what happened?
3508 A. Well, there was no work that day at the mine; I was working for Central, and my father-in-law wanted

me to go over and clean out the well for him, and I went there. I had drawed the water out, and went in the house to get a drink, and he lived close to Mr. Willsey there, and Mr. Willsey and his boy came down the hill toward the mine and said the tipple was afire. Me and Mr. Schmidt, my father-in-law, and Mr. Willsey and his son, met right at the barn and walked down to the shack together.

Q. Was there anything said about putting the fire out?

A. The fire was very small, and I told Mr. Willsey, I said, "If you want to put this out, Mr. Willsey, me and the old man will give you a hand to putting it out".

Q. What, if anything, did he say?

A. He said that Mr. Denman,—Bache will be tickled when he hears it has burned, he has it heavily insured.

Q. Did you testify at the former trial of this case?

A. Yes, sir.

Cross Examination

By Mr. Drinker:

Q. What did you say he said?

A. Mr. Willsey said "Mr. Bache will be tickled when he hears it was burning, he has it heavy insured, and let it go."

Q. Was that his exact words? A. Yes, sir.

Q. What did you say about Mr. Denman?

A. I didn't say anything about Mr. Denman.

3509 Q. When you said Mr. Denman you got the wrong man? A. Yes, sir, it was Mr. Bache.

Q. Now, just point out and show us where the fire was when it started,—is that a picture of Coronado tipple?

A. Yes, sir, that is something like it.

Q. Now point out where it was that the fire was when it first started?

A. The fire started right in this hopper here; back under the tipple.

Q. Now, where was the path that Mr. Wilsey came down?

A. The path?

Q. Yes. A. He came right down here (indicating).

Q. And how far was that from where Mr. Willsey went to the bin?

A. Maybe fifteen or twenty steps, something like that.

Q. And how high up the tipple was the fire?

A. About four feet.

Q. He showed you a bucket?

A. Yes, sir, there was a teaspoon full of coal oil in this bucket when Mr. Willsey came up.

Q. Now, how high was the flames when you got there?

A. They were about four feet [hight], down in the bin.

Q. And how long was it before they were all over everything?

A. It was not very long, about five minutes I guess when they got fifteen or twenty feet high, in the dry timber.

Q. Did you see coal oil all over it?

A. No, sir, I didn't see any on it at all.

3510 Q. Do you think from the way it burned that it was oil on it?

A. No, there was not very much on it; there could have been a gallon, or a quart or half a gallon.

Q. How big was this bucket?

A. A gallon molasses bucket.

Q. Did that indicate it was full of oil?

A. You could see,—there were two or three teaspoons full that did not pour out of the pail on account of the band.

Q. But was the bucket wet with oil in the middle?

A. You couldn't tell.

Q. Did the fire burn right up quick?

A. Tollerable quick.

Q. Where was the water?

A. About thirty-five yards right east of the shack.

Q. And you didn't do anything about it? A. No, sir.

Q. You didn't do anything about putting it out?

A. No, sir.

Q. Were you ever asked to sign an affidavit about this?

A. No, sir, I was not asked.

Q. Do you know anything about anybody else that was?

A. No, sir, I do not.

Q. Did you hear somebody else that was asked to make an affidavit? A. No, sir.

Q. Do you remember that you testified in the other case?

A. Yes, sir.

Q. You remember that you were asked, were you ever

3511 asked to make an affidavit as to who burned Coronado, and you said, "No", and you were asked if you ever heard anything about the affidavit, and you said, "Well, I heard some of them made one in Midland, but not me." You said that before? A. Yes, sir.

Q. And you were asked what you heard about that, and who said, "Oh, just someone made an affidavit" and that is all? A. Yes, sir.

Q. You said that? A. Yes, sir.

Q. You were a little mistaken when you said a moment ago that you had not heard about an affidavit?

A. I had not heard that.

Q. And did you know who it was that made the affidavit?

A. No, I did not.
Q. Do you know what the affidavit said? A. No, sir.
Q. Did you know anything about Commissioner Cleary coming down there? A. No, I don't.
Q. Did you know that Schmidt made an affidavit?
A. No, sir.
Q. That was the man that just testified? A. Schmidt.
Q. He never told you after that that he made an affidavit?
A. No, sir, he did not.
3512 Q. He is your father in law? A. Yes, sir.
Q. Did you talk this over with him afterwards?
A. No, sir.
Q. Not at all? A. No, sir.
Q. Never mentioned the fact from that day to this?
A. No, sir.
Q. And he never told you about being asked to make an affidavit? A. No, sir.
Q. Where did you live at that time, how near Mr. Schmidt?
A. Something like three quarters of a mile.
Q. Did you see him every day, or every few days?
A. No, sir.
Q. You married his daughter? A. Yes, sir, I did.
Q. He was at your house frequently?
A. Well, occasionally.
Q. And he never talked to you about that at all?
A. No, sir.
Q. Not a thing from that day to this? A. No, sir.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness excused.)

3513 HENRY WALL, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. State your name to the court and jury.
A. Henry Wall.
Q. Where do you live? A. Huntington.
Q. Where did you live in 1914? A. Huntington.
Q. Where is your business? A. Coal miner.
Q. Are you a member of the United Mine Workers?
A. Yes, sir.
Q. Do you remember when the Coronado tipple burned in 1914? A. Yes, sir.

Q. What day was it, if you know?
A. I don't remember now.
Q. About how long after the big battle that occurred out there? A. It occurs to me it was quite a few days.
Q. A few days after that? A. Yes, sir.
Q. When did you first hear or know of the tipple burning?
A. I was [it] home at Huntington, in a boarding house where I boarded.
Q. How far away is that from the tipple?
A. I guess it is 2 miles or 2½.
3514 Q. Did you go over there afterward? A. Yes, sir.
Q. Did anyone go with you?
A. Yes, sir, Jim Ferguson walked over with me.
Q. Was anybody around there when you got over there?
A. There was a few, not very many; about a dozen, possibly.
Q. About a dozen? A. In my judgment.
Q. Was Mr. Willsey there when you got there?
A. The mine foreman, Mr. Willsey?
Q. Yes. A. Yes, he was there.
Q. He was in charge of the tipple of the Coronado mine?
A. Yes, sir, he seemed to be; he was standing there.
Q. Did you hear him say anything with reference to the tipple being insured? If so, what was it?

Mr. Drinker: How long after? Was the fire going on then?

Q. What condition was the tipple in?
A. It was burning.

Mr. Drinker: That is all right.

Q. (By Mr. Warrum) The question is, did you hear him say anything with reference to the tipple being insured? If so, what was it?
A. Yes, sir. I asked him accidentally, I suppose, I said, "Mr. Willsey, have you any insurance on this property?" And he said, "Yes". He said, "It is insured."
Q. Was that said in the crowd?
3515 A. Yes, sir, right out just like I am talking here.
Q. Was anything else said?
A. He says, "Oh, yes", he says, "this is a benefit to the company." He says, "This mine is in a squeeze at the bottom." And he says, "That tipple is practically done." He says, "It is disabled", and he says, "It will have to be torn down and moved." He said, "All that is of any account is the slack washer"—or something like that there. He says,

"Now, you see, we will not have to go to the expense of tearing down that tipple, and we will also collect the insurance." That is the words he told me.

Mr. Warrum: That is all.

Cross Examination

By Mr. Drinker:

Q. How many people were there at the time and heard it?

A. I don't know how many heard it, but I would judge there was a dozen people standing there, and he talked just like I am talking now.

Q. Who? A. Mr. Willsey.

Q. Who were some of the other people that heard that?

A. I noticed Mr. Skow, the president or vice president of that Coal District Power Company. He was standing there looking after a transformer that was burning.

Q. Skow?

A. Mr. Skow. Mr. Herman Jeffries, the moving picture man, was standing there.

Q. Did he hear it?

3516 A. I don't know about that. I suppose he did.

Q. Who else?

A. Mr. Ferguson was standing there, the fellow that walked over there with me. I can't say who heard it, but I guess everyone did. Mr. Willsey, I guess, won't deny it himself.

Q. Did you testify at the former hearing of this case?

A. No, sir.

Q. You were a member of the United Mine Workers?

A. Yes, sir.

Q. Where did you live then? A. Huntington.

Q. Were you here at the other trial? A. No, sir.

Q. You were living at Huntington and belonged to the miners' organization? A. Yes, sir.

Q. Did you ever testify in any of the proceedings in this case?

A. No, sir, I never did. This is the first time I have been in court.

Q. What is Ferguson's first name? A. Jim.

Q. Jim? A. Yes, sir.

Q. Is he a member of the miners' organization?

A. I think he is now.

Q. Is that Skow the Huntington electric light man?

A. Yes, sir, that is what he does. He is vice presi-

3517 dent, I understand, of that company.

Q. And he was right there alongside of you?

A. He was right there. I noticed him in the crowd. He was looking after a transformer that was burning there.

Q. This other man you have mentioned as being there, is he a member of the miners' union? A. Who is that?

Q. Herman Jeffries.

A. He runs a picture show in Huntington.

Q. Did he then? A. Yes, sir.

Q. He was never a miner? A. Not that I know of.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness Excused.)

JIM FERGUSON, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. State your name to the court and jury.

A. Jim Ferguson.

Q. Where do you live? A. Huntington, Arkansas.

Q. Where did you live in 1914?

A. Huntington, Arkansas.

3518 Q. Are you a miner? A. Yes, sir.

Q. And you belong to the miners' union?

A. Yes, sir.

Q. And you did in 1914? A. Yes, sir.

Q. Do you remember the occasion when the Coronado tipple burned? A. I do.

Q. Where were you when you first heard or understood it was burning?

A. I was on the street, on the sidewalk in Huntington.

Q. What did you do after you heard that?

A. Mr. Wall came up and we talked about it and decided to walk out there.

Q. Did you walk out? A. We did.

Q. How many people were there when you got there?

A. There wasn't very many.

Q. Were there 20? A. I don't believe there was.

Q. Were there 10 or 12? A. Yes, sir, I think so.

Q. Did they mostly come from Huntington?

A. I only remember of seeing two from Huntington, except the one I went with. That was Mr. Skow and Mr. Jeffries.

Q. How far along was the fire when you got there?

A. The tipple and the slack washer had been burned down.

Q. They had burned down? A. Yes, sir.
3519 Q. How long did you stay there?
A. I suppose 30 or 40 minutes.
Q. Did the crowd remain around, or did some come and some go?
A. I am not certain whether Mr. Jeffries was there or not.
Q. Did you hear Mr. Willsey say anything with reference to the condition of the tipple?

Mr. Drinker: I object to that as a leading question. Let him ask what Mr. Willsey said, and not tell the witness what he said.

Mr. Warrum: I asked about the condition of the tipple, what he said about the condition of the tipple.

The Court: He may answer.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. State what you heard Mr. Willsey say with reference to the tipple burning.
A. Well, Mr. Wall asked him if it was insured, and he said that it was, and he said something, I don't remember just the words—it has been a long time ago, and I was not expecting to be no witness in the case, and I didn't give it a thought. He said something in regard to the shaft squeezing, and it would have to be renewed, and he said it was worth more money burnt than it was standing there.
Q. Were there other people standing there when he made that statement?
A. Mr. Skow was real close. Mr. Jeffries was right
3520 close, and Mr. Wall.
Q. Who is Mr. Jeffries?
A. Mr. Jeffries is a moving picture man in Huntington.

Mr. Warrum: That is all.

Cross Examination

By Mr. Drinker:
Q. The night before that did you hear rumors that the guards were coming to shoot up Huntington?
A. Well, I don't know.
Q. Did you hear it talked around there?
A. I heard someone or something in regard to that, but I don't remember.
Q. You heard some talk that the guards were going to shoot up Huntington or attack Huntington? A. Yes, sir.
Q. How far away was Huntington?

A. From Hartford?
Q. From Coronado? A. About 2 miles.
Q. Two miles? A. Probably a little further.
Q. Do you remember who told you the guards were coming to shoot up Huntington, or who you heard say it?
A. No, sir.
Q. But it was in the air, that they were coming over there?
A. Yes, sir.
Q. That was how long before this fire?
3521 A. I am not certain of that.
Q. Shortly before that?
A. I don't remember what night it was. It know there was some talk there some time.
Q. That they were coming to shoot up Huntington?
A. Yes, sir.
Q. Did you testify in this case before? A. I did not.
Q. You were a member of the miners' union then?
A. Yes, sir.
Q. And you knew then all you know now?
A. Yes, sir, I did.
Q. Where did you live in 1917, when this case was tried before?
A. I lived in Huntington. I have lived there since 1902.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness Excused.)

HERMAN W. JEFFRIES, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:
Q. State your name to the court and jury.
A. Herman W. Jeffries.
Q. Where do you live? A. Huntington.
Q. What is your business now?
A. Moving picture owner. I operate a show.
3522 Q. You have a show at Huntington? A. Yes, sir.
Q. What was your business in 1914?
A. Moving picture manager.
Q. Do you remember when the Coronado tipple burned in July, 1914? A. Yes, sir.
Q. When did you first hear of it burning?

A. I was in town on the street. I think it was phoned in. They said they phoned over that the Coronado tipple was afire.

Q. What did you do after you heard that with reference to going up there?

A. I had a horse and buggy at that time, and I got in the buggy with Mr. Skow and we went out.

Q. Mr. Skow went with you? A. Yes, sir.

Q. How soon did you get out there? What was the condition of the tipple when you got there?

A. The tipple was on fire. That washer was almost burned down, I guess, as well as I can remember. The engine house for the engine was burning.

Q. Was there a crowd or any people there?

A. I suppose there was 12 or 15 people there, as well as I remember.

Q. 12 or 15 people? A. Something like that.

Q. Was Mr. Willsey then present?

A. He came up just after we was there. Mr. Wall
3523 and Mr. Ferguson came up, and Mr. Willsey, I suppose the pit boss, he came up in 5 or 10 minutes after we got there.

Q. What did Mr. Willsey say with reference to the burning of the tipple?

A. I was standing next to Mr. Wall, about 3 or 4 feet from him, and Mr. Willsey was on the opposite of me and Mr. Wall. Mr. Wall asked him, "Have you insurance?" And he said, "Yes"; and he says, "We have got pretty good insurance on it." He said, "We will not have to move the tipple now."

Q. They would not have to move the tipple?

A. Yes, sir.

Mr. Warrum: That is all.

Cross Examination

By Mr. Drinker:

Q. You were living in Huntington in 1917? A. Yes, sir.

Q. Were you a witness in this case when it was tried before? A. No, sir.

Q. Your picture show was patronized practically solely by miners and their families, was it not?

A. By the community, farmers and everybody. Mansfield people come over. I run a real show.

Mr. Drinker: I am sorry I will not have time to see it. That is all, thank you.

The Court: Stand down.

(Witness Excused.)

Mr. Warrum: The defendants offer in evidence the
3524 constitution of District 21, without reading it.

The Court: It is part of the record, anyhow. It will be admitted.

(Said constitution of District 21, so offered and received in evidence, was marked by the reporter "Defendants' Exhibit No. 43", and is in words and figures following, to-wit:)

3525 Defendants Exhibit No. 43

Constitutions of the United Mine Workers

District Twenty-One
Adopted February 1914

International Constitution

Effective April 1, 1914.

3526 Constitution
District Twenty-One

United Mine Workers of America

Adopted February 1914

3527 Constitution United Mine Workers of America
District 21

Preamble

There is no truth more obvious than that without coal there could not have been such marvelous social and industrial progress as marks present day civilization.

Believing that those whose lot it is toil in the earth's recesses, surrounded by peculiar dangers and deprived of sunlight and pure air, producing the commodity which makes possible the world's progress, are entitled to protection and the full social value of their labor, we have formed the "United Mine Workers of America" for the purpose of establishing by lawful means the principles embraced in the body of this constitution.

Constitution

Article No. I

Name

This organization shall be known as the Twenty-first District of the U. M. W. of A. It shall not be committed to or favor any particular religious creed, neither shall affiliation herewith interefere with the religious or political freedom of its members.

3528 Article II.

Object.

First. The object of this union shall be to unite in one organization regardless of creed, color or nationality—all workmen eligible to membership employed in and around the coal mines, coke ovens and coal washers, for the purpose of obtaining the following as set forth:

Second: To increase the wages and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes.

Third: To demand that not more than eight hours from bank to bank in each twenty four hours shall be worked by members of our organization.

Fourth: To strive for a minimum wage scale for all members of our craft.

Fifth: To provide for the education of our children by lawfully prohibiting their employment until they have, at least, reached 16 years of age.

Sixth: To secure equitable statutory old age pension and workmen's compensation laws.

Seventh: To enforce existing just laws and to secure the repeal of those which are unjust.

Eighth: To secure by legislative enactment laws protecting the limbs, lives and health of our members establishing our rights to organize; prohibiting the use of deceptions to secure strike breakers; preventing the employment of privately armed guards during labor disputes; and such other legislation as will be beneficial to the members of our craft.

3529 Article III

Jurisdiction

Section 1. The jurisdiction of this district shall extend throughout the State of Arkansas, Oklahoma and Texas, and

all Local Unions shall be subject to the laws and rulings of the organization.

Sec. 2. In all questions of disputes, appeals and grievances affecting our members, (unless restricted by Joint Agreement) the decisions of the District Executive Board shall be final and binding until reversed by a District Convention or International Executive Board or inter-National Convention.

Article IV

Officers.

Section 1. The Officers of this District shall be one President, one Vice President, one Secretary-Treasurer; and four Executive Board Members who shall constitute the Executive Board; also a Board of Auditors consisting of three members.

Article V

Qualifications of Officers.

Section 1. Any member in good standing in the organization shall be eligible to hold office if he has been a member of the Local Union in the District one year preceeding the election and has had five consecutive years' experience in and around the coal mines prior to the election or has been under the employ of the U. M. W. of A. and has never been found guilty of misappropriating any of the organization's funds.

Sec. 2. No member shall hold two salaried offices in the District Organization at any one time or any affiliated
3530 union, except as delegate to the A. F. of L. convention.

Article VI

District Officers' Salaries.

Section 1. The President's salary shall be $111.10 per month and all legitimate expenses. The Vice President's salary shall be $105.26 per month and all legitimate expenses. The Secretary-Treasurer's salary shall be $111.10 per month and all legitimate expenses.

Sec. 2. The District Executive Board Members and Auditors shall receive $3.90 per day and all legitimate expenses when employed by the President to work for the organization.

Sec. 3. That in the event of the miners receiving any increase, the officers to receive the same.

Article VII

Duties of Officers.

Section 1. The President may preside over all regular and special conventions and meetings of the Executive Board and shall sign all official documents when satisfied of their correctness.

Sec. 2. He may, with the consent of the Executive Board, appoint such organizers and field workers as in his judgment may be required to serve the best interests of the organization, such appointees shall be bona fide members of the U. M. W. of A.

Sec. 3. He shall fill by appointment, all vacancies occuring in any of the elective officers with the consent of the Executive Board, providing such offices are declared vacant within nine months for date of general election. Otherwise he shall immediately order an election to fill such vacancy.

3531 Sec. 4. He may suspend or remove any officer for insubordination or for just and sufficient cause.

Sec. 5. He shall appoint from among the properly elected delegates to regular and special conventions the committees necessary to transact the work of the convention. Delegates shall be notified of their assignments on committees sufficiently early to enable them to meet at headquarters and be prepared to render a report on the first day the convention convenes. But if the convention is to consider charges regularly filed against the President, then the grievance committee shall be elected by the convention.

Sec. 6. He shall send out in circular form to all local unions six weeks prior to the District Convention such recommendations as he may deem wise to be acted upon by the convention, so delegates may obtain an expression from their constituents relative to the wisdom of such recommendations.

He shall file with the District Secretary-Treasurer, a copy of all written Joint Decisions and cause the same to be sent to all local unions.

Sec. 7. He shall devote his entire time and attention to the affairs of the organization, exercising general supervision over the same in the absence of Board meetings, and render a full and complete report of his work to the regular district Convention.

Duties of Vice President.

Sec. 8. The Vice President shall act as general organizer under the direction of the President, and shall discharge such other duties as may be assigned to him in the absence of the President. He shall assume all the duties and responsibilities and shall succeed to the office in case of death or
3532 removal of the President, as provided f · in Section 3 of this Article.

Duties of Secretary-Treasurer.

Sec. 9. The Secretary-Treasurer shall have charge of and preserve all books, documents and effects in the District office except such records as properly belong to the President, and shall record the proceedings of all conventions and meetings of the Executive Board, and shall keep copies of all important letters sent out by him.

Sec. 10. He shall receive and receipt for all money, pay all bills and current expenses, where attested to by the President and shall prepare and submit to all locals a semi-annual statement showing salary and expenses of each employee in separate items, and report all moneys received and disbursed.

Sec. 11. He shall give bond in the sum of ($30.000.) secured by a reliable Surety Company for the safe keeping of all moneys entrusted to him, such bond must be approved by the District Executive Board and deposited with the Presid- ($5,000.) subject to his order at any one dent. He shall not have more than time.

Sec. 12. He must deposit all funds in excess of $5,000 in banks giving interest bearing certificates of deposits, subject to the orders of the District Executive Board. He shall semi-annually send to all locals in good standing the pass-word.

Sec. 13. The books of the Secretary-Treasurer shall be closed the last day of the month previous to the month the regular convention is held.

Sec. 14. He shall employ such assistance as may be necessary to conduct the affairs of his office and shall have all District printing done subject to the approval of the Dis-
3533 trict Executive Board, and shall perform such other duties as may be assigned to him, or as elsewhere herein provided.

Duties of the District Executive Board.

Sec. 15. The District Executive Board shall execute the instructions of the District Convention and between conventions shall have full power to direct the workings of the organization, and shall have power to suspend or remove the President for insubordination or for just and sufficient cause.

Sec. 16. The Executive Board shall be convened by the President or by request of a majority of the members thereof, and they shall have power to draw upon and use the defense fund only in case of strikes or lockouts; also to levy and collect such assessments as they deem necessary to safe-guard the interest of the organization.

Sec. 17. The Board shall hold in trust for the United Mine Workers all moneys deposited by the Secretary-Treasurer in the name of the Executive Board, and under no circumstances shall said money be drawn except upon written order of two-thirds of the members of the Board.

Sec. 18. All proposed legislation and investigation pertaining to laws in the interest of the miners, shall be under the control and jurisdiction of the District Executive Board.

Duties of Auditors, Tellers and Credential Committees.

Sec. 19. The Auditors shall meet semi-annually and shall have full power to make a thorough inspection of the office of the Secretary-Treasurer, as it applies to the Organization's funds and shall immediately report any irregu-
3534 larities to the District Executive Board. They shall audit the books and accounts and make a full and complete report of their findings to the Local Unions of the District.

Duties of Tellers.

Sec. 20. The Tellers shall prepare and submit to the Local Unions of the District their report of the election showing the number of legal votes cast for the candidates to the respective offices, which shall be an official announcement of the election, but sho ld they for any reason refuse to tabulate the vote of any local, their reasons must in every instance be shown on their report, submitted to the Local Unions, and all contests growing out of the report shall be submitted to the regular constitutional convention, which body shall have power to decide before ratifying the Tellers' report.

Duty of Credential Committee

Sec. 21. The credential committee shall examine the delegates' credentials, prepare and submit a report on the convening of the convention, of all delegates entitled to seats, and in names of deleg tes whose seats are in contest shall be withheld from the committee's report until the contest is decided.

Sec. 22. The Auditors shall also act as Tellers and Credential Committee and shall meet at headquarters in sufficient time to enable them to make their r port upon the convening of the convention.

Article VIII

Nomination and Election of Officers.

Section 1. The President, Vice President and Secretary-Treasurer, International Board Member and Auditors, shall be elected by a majority of all legal votes cast, in a
3535 referendum election. District Executive Board Members shall be elected in the same manner by a majority of legal votes cast in their respective Board Members Districts. One Sub-District Board Member shall be elected from Arkansas; two Sub-District Board Members shall be elected from Oklahoma, and one Sub-District Board Member shall be elected from Texas.

Sec. 2. In the event no candidate for the respective offices receives a majority vote on the first ballot, another election shall be held and the names of the two candidates receiving the highest number of votes for the respective offices shall appear on the ballot for Second Election.

Sec. 3. The term of office shall begin April 1st following their election and the next election shall be held the second Tuesday in December, 1912. The officers elected shall serve for a period of two years, and future elections be held each alternate year thereafter.

Sec. 4. The District Secretary-Treasurer shall prepare nomination blanks and send them to the Local Unions not later that twenty weeks before the date of election, and the local recording secretary shall fill in the names of members nominated by the Local Union for the various offices and forward same to reach the District Treasurer's office not later than fifteen weeks before date of election.

Sec. 5. The District Secretary-Treasurer shall within ten days thereafter notify all members who have been nominated and ask if they are candidates.

Sec. 6. Any nominee notified in accordance with Sec. 5 of this article who desires to become a candidate must have his official notice attested to by the officers of his local
3536 union and the seal attached and return said notice to the District Secretary-Treasurer at once.

Sec. 7. No nominee filing his acceptance with the District Secretary-Treasurer shall be allowed to withdraw his name.

Sec. 8. The District Secretary-Treasurer shall prepare ballots, giving the names and places of residence of those accepting nominations, also showing the positions for which the various nominees are candidates and forward them to the Local Unions in sufficient numbers to supply each member not later than eleven weeks prior to the date of election, with two tally sheets, one return sheet and one envelope and return sheet must accompany the ballots sent each Local Union.

Sec. 9. The Secretary of any Local Union failing to receive ballots, tally and returning sheets from the District office within ten days prior to the regular District and Special Election shall notify the Secretary-Treasurer of same, who shall immediately forward ballots, tally and returning sheets to the Local Unions affected.

Sec. 10. Local Recording Secretaries must notify their members by posting notices and otherwise, one week prior to the dates set for the nomination and election of District officers.

Sec. 11. Each Local Union shall designate, at a regular meeting where its election shall be held and the place so designated shall be the official voting place of such Local Union, and under no circumstances shall the votes of any local be tabulated in any place other than that designated by the Local Union, and no member shall be allowed to interfere with the official Tellers during the tabulation.

3537 Sec. 12. No member shall be allowed more than one vote for any any candidate, nor shall the local Tellers record the vote of any member who is not present at the time the election is held, except officers, organizers and workers in the field away from home, whose votes shall be recorded if sent to the Secretaries of their respective Local Unions.

Sec. 13. Each Local Union shall elect from among its own members a committee of not less than three, nor more than six, three of whom must be the local President, Financial and Recording Secretary, to act as local Tellers, whose duty shall be to supervise the election and when requested instruct the

members how to vote and tabulate the votes cast by the members for for District offices, and enter on the "Return Sheet" furnished by the District Secretary-Treasurer for that purpose and the total number of votes cast for each candidate containing the signature of member voting, The correctness of the "Return Sheet" must be attested by the President and Recording Secretary of the Local Union.

Sec. 14. There shall be a day set aside for the election of District Officers and under no circumstances shall the ballot of any member of any local union be counted and recorded unless each vote or votes were cast at a regular voting place designated by the local union.

Sec. 15. Should it be proved that more votes are recorded on the return sheet than were actually cast by the members the entire vote of the Local Union shall be thrown out by the Tellers and those responsible for the fraud shall be punished as hereinafter provided.

3538 Sec. 16. After the votes have been tabulated and the return sheet attested, it shall be turned over to the recording secretary, whose duty it shall be to see that the return sheet is properly attested, enclosed in a special envelope furnished by the District Secretary-Treasurer for that purpose, and forwarded at once by registered mail to the District Secretary-Treasurer's office. Return sheets reaching District headquarters after January 1st shall not be tabulated by the District Tellers.

Sec. 17. The envelope for Return Sheets furnished the Local Unions must have the name and address of the District Secretary-Treasurer, and the following printed thereon.

Election Returns

From L. U. No. .....

Sec. 18. When the Return Sheets reach the District Secretary-Treasurer's office, he shall examine the envelope to see if they are intact, make a proper record of their receipt and deposit them unopened in a securely locked receptacle provided for that purpose.

Sec. 19. Before turning the Return Sheets over to the Tellers, the Secretary-Treasurer with the Tellers, must check them with the record made upon the receipt, and the Secretary-Treasurer shall take the Tellers' receipt for all Return Sheets turned over to them.

Sec. 20. The District Secretary-Treasurer shall be absolute custodian of the Return Sheets from the time they reach his office until turned over to the District Tellers and during the interim of tabulation, and the same shall remain in his possession six months after the date of election.

3539 Sec. 21. No member who is not a regular attendant of the meetings of his Local Union shall be allowed to act as a Local Teller of District Elections.

Note—The term "Regular Attendant" shall mean a member who attends at least one half of the meetings of his local union six months previous to the election.

Sec. 22. The District Tellers shall not count the votes of any local union that has cast more votes than the number of members each local paid per capita tax on to the District organization for the month preceding the one in which the election is held, unless a satisfactory explanation for so doing accompanies the Return Sheet of the Local Union so voting. Neither shall they count the votes of any Local Union that is not in good standing with all branches of the organization or whose return sheet is not attested as required by Section 13 of this Article.

Sec. 23. All contests in connection with the vote of any Local Union must be filed with the Tellers not later than ten days after the d te of election, by some responsible and reputable member of the Local Union whose vote is contested.

Sec. 24. Local officers of all Local Unions shall be required to carefully preserve all ballots which have been cast for District officers of their respective Local Unions for a period of six months after the date of election.

Sec. 25. No member other than the local Tellers shall be allowed to loiter around the voting place or to interfere in any way with the election of any Local Union.

Sec. 26. Local Tellers shall be held personally responsible for any irregularities that may take place in their
3540 Local Unions during the election of District Officers.

Sec. 27. Any local officer or Teller failing to obey the laws regulating District Elections, or any member or members interfering with local officers of Tellers during the discharge of their duties in connection with the District Elections, or any member or members resorting to dishonest or questionable practices to secure election or defeat of any

candidate for District office, shall, upon conviction be fined $50,00. Fines so collected shall become a part of the District Defense Fund and all trials shall be conducted as provided for in Article 13.

Sec. 28. Upon the signed request of 10 per cent of the entire membership, the Secretary-Treasurer shall send out a petition to each Local Union for the recall of any officers elected by the District guilty of malfeasance in office. Said petition to accompany charges for which a recall is asked and defense of those charged.

If within thirty days after the petition is sent out, 30 per cent of the entire membership send a signed request to the Secretary-Treasurer, the District Executive Board shall call an election for the recall of any District officer so charged.

Said election to be held in accordance with the election laws of the organization.

Article IX

Conventions.

Section 1. The regular Dictrict Convention shall be held biennially on the third Tuesday in April at such place as may be determined by the preceding convention. The District Secretary Treasurer shall issue a call six weeks prior to date of its convening.

3541 Sec. 2. Representatives to the District Convention shall be elected directly from Local Unions they represent, and shall have one vote for one hundred members or less, and one additional vote for each one hundred members of a majority fraction thereof, but no delegate shall be allowed more than five votes.

Sec. 3. Representation shall be based upon the average membership of the Local for the last three months upon which payment has been made previous to the month in which the convention is held.

Sec. 4. Any Local Union having one hundred members or more in good standing, must be represented in the convention or pay to the District Secretary-Treasurer a fine of $25.00 for each one hundred members in good standing in the Local Union, unless exonerated by the District Executive Board. This section shall not apply to local Unions whose members have been idle for one month or more prior to the convention on account of strikes, suspensions or lockouts.

Sec. 5. Local Unions of less than one hundred members may conbine with similar Local Unions within a reasonable radius of each other in the same district, and elect delegates to represent them, but no delegates so elected shall be entitled to more than five votes in the convention.

Sec. 6. No Local Union shall be entitled to representation that is in arrears for per capita tax of assessment for two months preceeding the month in which the convention is held and which has not in every particular complied with the District constitution.

Sec. 7. No person who is not a bona fide member of a local Union employed in or around the mines or by the or-
3542 ganization shall be eligible to act as delegate.

Sec. 8. No appointed employe of the organization shall be a delegate from any Local Union other than his own.

Sec. 9. Any member accepting a position other than that of a mine worker shall not be eligible to act as a delegate to any District Convention or to represent the United Mine Workers in a central body or State Federation of Labor Convention, while holding such position, but accepting a position with the United Mine Workers or any other affiliated organization, shall not be construed as making a member ineligible to act as such.

Sec. 10. The Secretary-Treasurer shall furnish the Local Union with Credential blank in duplicate, which must be attested as required on the blanks. The duplicate shall be retained by the delegate and the original forwarded to the District Secretary-Treasurer, and no credentials shall be accepted later than five days prior to the date for convening the convention.

Sec. 11. The Credential Committee shall not transfer votes to any delegate unless authorized by the Local Union to do so.

Sec. 12. Delegates to District Conventions must be elected at of official meetings of Local Unions after the call for the convention is received and has been read to the Local Union. The local recording secretary shall post notices, signed by himself and the local president, at the mine at least three days prior to such meetings, stating that delegates are to be elected on a certain date. Delegates must receive a majority vote of the members present at such meetings, stating that delegates are to be elected on a certain date. Delegates must

receive a majority vote of the members present at such meeting, and no meeting other than the one first advertised
3543 and called in accordance herewith, shall be recognized as an official meeting for the election of delegates.

Sec. 13. Local officers failing to read the call for a convention to their Local Union, and to post notices in accordance with Section 12 of this Article, shall upon conviction be removed from office, and shall not thereafter be allowed to hold office in the organization for two years.

Sec. 14. When any delegate's credentials are to be contested, notice of such contest shall be sent to the District Secretary-Treasurer not later than ten days prior to the date for convening the convention; but any delegate whose credentials are contested may be unseated at any time during the convention.

Sec. 15 All resolutions, grievances and constitutional amendments to be considered by the convention shall be sent to the District Secretary-Treasurer not less than seven (7) days prior to the date set for the convention, who will sort and distribute them among the chairmen of the various and proper committees.

Sec. 16. Resolutions bearing on different subjects shall be written on separate papers.

Sec. 17. The District Convention shall not consider internal appeals or grievances unless they have been previously considered by the lower tribunals of the organization.

Sec. 18 The District organization shall pay the transportation of delegates to and from the District Conventions on the following basis: Local Unions of from ten to five hundred members shall be entitled to transportation for one delegate and one additional delegate for each additional
3544 one hundred members or fraction thereof, provided such fraction is not less than twenty-five members. Where Local Unions combine, as provided in Section 5 of this Article, shall be entitled to transportation for one delegate for each one hundred members or fraction thereof provided such fraction is not less than twenty-five members. Where railroad certificates cannot be secured by delegates, they shall furnish receipts for fare paid.

Sec. 19. No District officer other than the President and Secretary-Treasurer shall be allowed to attend any convention other than the regular or special District Convention

unless the Local Union employing said officer pays his salary and expenses.

Special Conventions.

Sec. 20. Shall be called by the President when so ordered by a majority of the District Executive Board.

Sec. 21. One-fourth of the membership of this District shall call a Special Convention, the same to be determined at a regular meeting of the Local Unions and only members present and voting in favor of said call shall be counted and recorded and all Local Unions shall forward their vote, together with the reasons set forth, for calling a Special Convention. The vote of all Local Unions to be certified to by the President and Recording Secretary and seal attached.

Sec. 22. The District Secretary-Treasurer shall compile the total vote cast for a Special Convention and issue a call for the same together with the reasons set forth as provided for in Section 21 of this Article. The convention shall have no authority to consider any question other than that which is specifically stated in the call.

3545 Article X

Revenue.

Sec. 1. The revenue of this District shall be derived from the Local Unions Viz: 25 cents per capita tax per month, fractional members pro rata. The funds shall be used to pay the officers' expenses, organizers, office expenses, and cost of securing better legislation for the benefit of the Miners. The strike or defense fund shall hereby be created by an assessment of 35 cents per month, per member, said fund shall be used for no purpose other than strike, lock-outs or suspension.

Note—The word lock-out or suspension shall not apply to members who are thrown idle on account of mines being abandoned or shut-down) Said fund shall, after a period of six weeks, be distributed to all members out of employment, at the rate of $3.00 per week, per member, until the defense fund is exhausted.

Sec. 2. An Old Age Pension fund is hereby created by an assessment of 15c per member, per month, together with all interest received from money on deposit in District Treasury. Said fund to be disbursed as hereinafter provided.

Sec. 3. All members in good standing in District No. 21 for 5 years preceding Jan. 1, 1913, shall receive $3.00 per week per member payable the first Monday in each month, providing he is 60 years of age and discontinues working in the mines, or has been physically disabled from performing further labor in or around the mines and has no other means of support.

Sec. 4. Anyone becoming a member of District No. 21 on or after Jan. 1, 1913, shall not be elibile to receive any
3546 assistance from this fund until he has been a member in good standing in the organization for 5 years from Jan. 1, 1913.

Note—The word "means of support" shall not prohibit any member otherwise eligible to draw his weekly allowance until it is proven conclusiv ly by the local union wherein said member holds his membership that his financial standing is sufficient to protect him against further labor in the mines.

Sec. 5. All applicants for pensions must be certified to by the local President and Secretary after the same has been approved by the local union, giving such applicant's age, standing in the organization and such other information necessary to determine the legality of his claim as herein provided.

All applications shall be filed with the District Secretary-Treasurer who shall have full charge of the distribution and care of said fund, subject to the orders of the District Executive Board.

Sec. 6. Should it develop that applications have been appr ved in violation of the provisions of Sec. 2 of this amendment, the payment of same shall be immediately discontinued upon written notice filed with the District Secretary-Treasurer by the local union that said applicant holds membership in, or by the District Executive Board, after a hearing has been granted any member filing such information, and investigation made of same.

Sec. 7. Any member leaving this District shall waive his claim in every respect with said fund. This amendment to be in effect and on and after Jan. 1, 1913.

Sec. 8. No local or locals shall be exempt from pay-
3547 ing per capita tax, or assessment unless they have been idle for one month. In all cases where Local Unions desire exoneration from dues, such requests shall be signed by the President, Secretary and Mine Committee and ap-

proved by the President and Secretary of the District and a report shall be made each week, giving the number and names of idle men, in the place of the regular monthly financial reports, as long as members remain idle.

Sec. 9. The local secretary shall fill out and forward to the District Secretary-Tre surer on or before the 25th of each month, a report of all mem bers in good standing in the Local Union on the 1st day of that month, together with all taxes and assessments due to the District office for the same.

Sec. 10. Should it be proved that any local financial Secretary has failed to report monthly the full membership of his local to the District Secretary and to send in the full amount of per capita tax on the same number of members that have paid dues to the Local Union, together with the full amount of assessment due the District organization, the Local Union shall be suspended from all privileges and benefits until the deficiency is made good and the officer responsible for such failure shall not be allowed to again hold office in the organization.

Sec. 11. In the filing of the monthly report the local secretary shall report to the District office on blanks furnished for that purpose the amount of money paid in and the number of members reported to the National Secretary, the amount of money and number of members reported to the District Secretary-Treasurer and shall sign a certificate showing that the report is for the full number of members in good standing in the local.

3548

Sec. 12. Any member defrauding the organization of dues or assesments, by failing to receive a check number, will be fined five dollars ($5.00).

Sec. 13. The revenues of this District shall not be used for the payment of Expenses incurred by any committee or members appearing before the legislative bodies of Arkansas, Oklahoma and Texas, unless officiently authorized by the District President. It shall be the duty of the District President to appoint a committee to appear before the Legislative bodies of the above named states to represent the Miners' interests in encouraging the passage of mining legislation. Said committee shall act in conjunction with the Legislative committee of the State Federation of Labor.

Article XI

Local Unions—How Formed and Governed.

Section 1. The membership of Local Unions shall be composed of workmen skilled and unskilled, working in and around coal mines, coke ovens and coal washers, except Mine Foremen, top foremen, operators, commissioner, boy scouts, persons engaged in the sale of intoxicating liquors, or members of any detective association, shall not be eligible to membership.

Section. 2. No mine shall be under the jurisdiction of more than one Local Union, neither shall separate locals be established for coal washers or coke oven employees, unless there is no local union having jurisdiction over some adjacent coal mine to which they can be long.

3549 Sec. 3. Each local Union shall have the right to penalize its own members or debar f om membership any applicant therein. Any member penalized or any person so debarred shall have the right of appeal in consecutive order to the next branch in authority, any one of such branches shall have authority to reverse the decision of the Local Union, and any Local Union debarring any applicant from membership shall give such applicant written reasons for his debarment.

Sec. 4. Should any Local Union be dissatisfied with such decision (unless prohibited by Joint Agreement) they shall have the right of appeal to the branch next in authority until a final decision is reached, as provided in Section 2 of Article 3.

Sec. 5. When it is finally decided that any Local Union has done an injustice to any member, or applicant for membership the branch responsible for the injustice must compensate such member or applicant for time lost and expense incurred while defending h is rights, and any such defendant shall be restored to all former rights and privileges in the organization.

Sec. 6. The intiation fee for the practical miner shall be $10.00. The non-practical miner $50.00. For top laborers $10.00. Any top laborer desiring to go into the mine shall pay an additional fee of $40.00.

Sec. 7. The intiation fee for miners' and widows sons and orphans 16 years of age shall be $2.50.

Sec. 8. Boys other than miners' or widows' sons 17 years of age shall pay $10.00 initiation fee provided that where the State Law prohibits the employment of boys under 17 years of age they may be admitted to membership by paying an initiation fee of $2.50 and in no case shall any Local Union donate any part of the initiation fee back to the mem-
3550 ber.

Sec. 9. Any member or members of the organization misrepresenting the age, occupation or experience of any person making application for membership in any Local Union shall, upon conviction, be fined $10.00.

Sec. 10. Any member becoming three months in arrears for dues and assesments, unless officially exonorated from the payment of same, shall forfeit his membership and can be reinstated only by paying an initiation fee in accordance with the laws of the District.

Sec. 1. Any member attending school as a pupil, shall be granted leave of absence by his Local Union, and on returning to work in the mine, shall be admitted to membership without the payment of initiation fee.

Sec. 12. Any member charged with having abused the use of our pass word shall, upon conviction, be fined $5.00.

Sec. 13. Any member carrying news to any person or persons outside of the hall shall be fined not less than $5.00. This shall not include mine committee.

Sec. 14. When a mine is abandoned indefinitely and all the members of the Local Union having jurisdiction over it have gone to work elsewhere, the local recording secretary must notify the District secretary of the fact and the District Secretary must make application to the international Secretary-Treasurer for exoneration for the Local Union for each month the mine is idle.

Sec. 15. No Local Union shall for any reasons divide its funds among its members. Any Local Union using its funds for other than legitimate purposes shall be fined double the amount so used, the fine to be collected by order of the
3551 District Executive Board and deposited in the District Defense Fund.

Sec. 16. All local officers and Mine Committee-men shall be elected the last meeting in June of each year by a majority vote of members present and shall serve until their successors are elected and qualified.

Sec. 17. The date of Local Elections for local officers, mine committeement and check-weighmen must be generally advertised among the members at least one week previous to the date of election.

Sec. 18. No person shall be eligible to act as a local officer who has not been a member of the Local Union at least six months. This section is not intended to apply to newly organized locals and Mine Committee-men.

Sec. 19. No person shall hold two offices in a Local Union at the same time. This section shall not apply to mine committee-men or check-weighmen.

Sec. 20. The candidates for the position of check-weighman shall be a member of the U. M. W. of A. six months prior to their election and no member shall be eligible to vote who does not contribute directly to his support. The term and method of election of check-weighmen shall be left to the Local Union.

Sec. 21. The check-weighman shall keep a record of all men employed in and around the mines and perform such other duties as may be assigned him. He may be removed for just and sufficient cause any time after a fair and impartial trial.

Sec. 22. All Local Unions are required to affiliate with central body of State Federation of Labor, if such federations are chartered by the American Federation of Labor.

3552 Sec. 23. All local officers entrusted with the finances of the organization must give a bond insuring a faithful performance of their duty, the amount of said bond to be determined by the Local Union, said bond must be secured from a reputable surety company.

Sec. 24. The local seal shall remain in the custody of the local recording secretary and that officer shall be responsible for any misuse of the same.

Sec. 25. Any member going to work in a non-union mine shall forfeit his membership and can be reinstated only by complying with the laws relating to such offense in the Local Union where said offense is committed, unless such work is done with the consent of the President of the District where the union mine is located.

Sec. 26. Any member leaving one locality and securing employment in another shall deposit his transfer card with the check-weighman or mine committee or agree to sign a check-

off for Ten Dollars ($10.00) and failing to deposit his transfer card within ten days thereafter shall forfeit the said $10.00 unless it can be proven by said member or members that they are in no way responsible for not depositing their card as herein prescribed.

Sec. 27. Any member or members of any Local Union thrown out of employment by any local officer failing to promptly discharge his duties, said local officer responsible shall compensate the member or members for time lost.

Sec. 28. No member holding a transfer card shall be entitled to strike benefits (where such are paid) from the
3553 Local Union issuing the card, until such card has been redeposited with said local, and when only from the date on which the card was re-deposited.

Sec. 29. Any transfer card that is lapsed for a period of three months shall be invalid and shall not admit the holder to membership in any Local Union.

Sec. 30. Any member withdrawing his transfer card from a local shall be known as a member of the local issuing the card until it is deposited with some other local or until the card is lapsed.

Sec. 31. No member shall accept compensation from any one he takes into the mines to work with him. Anyone found guilty of such offense shall be fined for the first offense the sum of $50.00, for the second offense he shall be expelled.

Sec. 32. The Unions when electing officers or changing officers of the local shall notify the National and District officers within five days after such changes are made.

Sec. 33. No local shall in any way deprive a member on account of his absence from being eligible as a delegate to any convention when he is on duty serving the organization.

Sec. 34. Any member proven guilty of pawning his transfer card for money shall be expelled from the organization and his name published i the U. M. W. of A. Journal.

Sec. 35. No member of the United Mine Workers in District 21 shall be allowed to collect financial assistance on a transfer card or letter of recommendation, unless the right to collect such assistance is endorsed by the District President.

Sec. 36. Any local Union, Mine Committee, or Member, referring any dispute or grievance, shall first secure
3554 all information upon question in the dispute, before grievance shall be presented to the District officials;

failing to do so said District Officials shall diregard grievance until evidence is furnished. Any local union, mine committee or member violating the provisions of this section, shall be subject to a fine of $5.00. Said fine to be collected by order of the District Executive Board.

Article XII

Strikes.

Section 1. When trouble of a local character arises between the members of Loc l Unions and their employer, the Mine Committee and officers shall endeavor to effect an amicable adjustment, and failing they shall immediately notify the officers of the District and said District Officers shall immediately investigate the cause of complaint, and failing to effect a peaceful settlement upon a basis that would be equitable and just to the aggrieved members, finding that a strike would best subserve the interests of the locality affected, they may with the consent and approval of the District officers order a strike.

Sec. 2. Any Local Union striking in violation of the above provision will not be recognized or sustained by the District officers. Before final action is taken by the District upon questions that directly or indirectly affect the interests of the mine workers of another District or may require a strike to determine, the President and Secretary of aggrieved District shall jointly prepare, sign and forward to the National President a statement setting forth the grievance complained of, the action contemplated by the District, together with
3555 the reasons therefor, and await the decision of the National President and be governed thereby; and in all cases the Mine Committee and employees and all parties involved must continue to work pending an investigation and adjustment until a final decision is reached in the manner above set forth.

Sec. 3. Any Local Union, Committee or member acting in violation of Section 1, of this Article, shall be liable to expul ion or fine, subject to the discretion of the District Executive Board.

Sec. 4. Any Local Union, member of members of the organization creating a condition which prevents the carrying out of the Joint Agreement in any locality or mine, shall be fined ten dollars ($10.00) each for such offense and refusing to pay same shall be expelled or charter revoked.

Article XIII

Charges and Methods of Trials.

Section 1. When any officer of the organization other than loc 1 is charged with an alleged official offense against the organization or any of its members, the charge must be lodged with the Executive Board of the branch of which he is an officer and the decision of said Executive Board shall close the case insofar as such tribunal is concerned, but should the accused or his accuser be dissatisfied with the decision of the tribunal first trying the case, either shall have the right of appeal to the next highest tribunal in authority and so on until a final decision is reached, as provided in Section 2, of Article 3.

Sec. 2. When any local officer or any member not an officer is accused of violating any of the organization's laws or of any transgression against the organization or any of its officers or members, the charge must be first lodged with 3555a and prosecuted before the Local Union of which the alleged offender is a member, and the decision of the Local Union of which the alleged offender is a member, and the decision of the Local Union shall close the case in so far as that tribunal is concerned, but should the accused or his accuser be dissatisfied with the decision of the tribunal first trying the case, either shall have the right of appeal to the next highest tribunal in authority and so on until a final decision is reached as provided in Section 2 of Article 3.

Sec. 3. When it is proved that either party to a case has wilfully failed to appear before the proper tribunal for a hearing after receiving official notice to do so, the case shall be decided in favor of the party so appearing and no appeal shall be allowed, and if neither party appears, the case shall be closed by default.

Sec. 4. The tribunal first trying any officer or member for any offense against the organization, except as elsewhere provided, shall have the right to fix the penalty for the offense and if sustained, compliance with the penalty so imposed with be the only basis upon which the offender can regain good standing in the organization.

Sec. 5. The foregoing sections of this article shall not prohibit the enforcement of penalties as provided elsewhere in this constitution. Neither shall they prohibit the use of the right of recall as provided by Section 28, Article 8.

Article XIV.

Miscellaneous.

Section 1. Any officer or any member of any branch of the organization guilty of embezzlement or of misappro-
3556 priating any of the funds of the organization, shall be prosecuted by every means possible by the branch whose funds are embezzled or misappropriated, and shall not be allowed to hold any office in the organization thereafter.

Sec. 2. Any officer of any branch of the organization accepting a salaried political office other than that of a State legislator, member of Congress, county sheriff, or member of State Board of Arbitration, State mining board, local school bo rd, city or town council, shall resign his office in the United Mine Workers immediately upon his acceptance of the same.

Sec. 3. Any officer or any employee of any branch of the organization seen in public in a state of intoxication while on duty, shall, upon conviction, be at once removed from his position by the proper authority having jurisdiction over such officer or employee.

Sec. 4. Any member of the United Mine Workers of America who shall enter any regular or special meeting in a state of intoxication shall be fined not less than one dollar $1.00 nor more than ten dollars ($10.00) and said moneys turned into the defense fund.

Sec. 5. All officers of all branches of District No. 21 must upon retiring f om office, turn over to their successors all monies, official records and documents, and all property belonging to the organization that may be in their possession at the time of their retirement.

Sec. 6. No miner, machine runner or helper, shall be permitted to enter the mine on idle days for the purpose of work-
ing except by permission of the Mine Committee and
3557 Executive Board, same to be in urgent case in slopes and slope airways. Any miner, machine run er or helper doing so shall be fined ten dollars ($10.00) for each and every offenne and the amount of the fine sent to the District office and deposited in the defense fund. Day hands may do work on idle days provided he shall not produc coal, but all day work to be equally divided among the day hands. A day laborer accepting work on idle days shall only receive the scale of wages adopted for said class of work. The company soliciting a day man for any class of work other

than the regular work for which he was employed shall pay him the scale of wages governing his regular employment.

Sec. 7. Any member found guilty of contracting or accepting as comp nsation for his labor less than the scale of price, shall be fined twenty-five ($25.00).

Sec. 8. Any members of any Local Union found guilty of hiring laborers in the mine shall be fined fifty dollars ($50.00).

Sec. 9. Any member guilty of slandering or circulating or causing to be circulated false statements about any member of, or any member circulating or causing to be circulated any statement wrongfully condemning any decision rendered by any officer of the organization, shall, upon conviction, be suspended from membership for a period of six months and shall not be eligible to hold office for two years thereafter.

Sec. 10. All fines shall be considered as dues and shall be collected in the form that they accure and be paid into the Local Union where the members so fined belong unless otherwise provided for.

Sec. 11 Any member of the organization withholding
3558 any official official documents from the local or persons whom it was intended for, shall be removed from office or fined ($10.00. The same shall apply in not answering documents when required.

Sec. 12. No District officer shall recognize any grievance presented by any officer, member or members of any Local Union until grievance has been handled by the proper parties specified by Joint Agreement.

Sec. 13. No District officer shall recognize any grievance that has been brought to his notice by an individual member or render any decision until he has consulted with Local Union affected.

Sec. 15. No officer of this District shall enter into any wage agreement with any individual or any member or members of the organization, to operate a coal mine on a cooperative basis or what is known as a stock company basis, unless such mines are operated under the direct supervision and management of the organization, and all coal mines operated on the above mentioned basis in violation of this section shall be declared unfair.

Sec. 16. The books of decisions, shall become the property of the local unions and shall remain in the possession

of the Recording Secretary and any officer or member of any local shall first fisn a receipt ass ring the prompt return of said books before the Recording Secretary shall permit it to pass out of his possession. Any any officer or member or members failing to make prompt return of said books as herein provided, shall be fined the sum of $25.00.

Sec. 17. Where evidence can be conclusively established that a Board Member has made application for another
3559 position and it is proven, he shall be immediately deposed from the District Board.

Sec. 18. Whenever the members or officials of any Local Union shall be satisfied that any operator, agent, lessee or owner of any mine in this District is or is about to become financially embarrassed to the extent that said operator, agent, lesse or owner, is, or is likely to be unable to make full and complete settlement of wages upon the regular pay day said unions or the District officers shall have power to demand of said operator, agent, lessee or owner, a good and sufficient bond conditioned that all wages due, or which may become due, to all employes shall be fully paid during the life of any working contract.

Sec. 19 No face bosses shall be permitted to a voice or seat in the Local Union.

Sec. 20. This constitution to become effective on and after April 1st, 1912.

Sec. 21. Where any part of the constitution shall in any way conflict with either the National or District Agreements, the agreements shall have precedence in all cases.

Sec. 22. When disputes or grievances arise growing out of joint agreements and the same is sustained by the District Board Member taking up such cases, said official shall immediately secure such evidence as may be necessary to support his position and prepare and present his case to those designated by joint agreement to render final decision on same. This section will in no way prohibit the District President to take part in preparing and presenting such cases.

Sec. 23. This constitution can be amended or abro-
3560 gated by a majority of votes of the members of the Local Unions by a referendum vote. A majority of the Executive Board or one-fourth the membership of this district may at any time demand that any part of the constitution be submitted to the local unions to be voted upon.

Mr. Warrum: The defendants rest.

The Court: Is there any rebuttal?

Mr. Drinker: We have some rebuttal, your Honor, but we would like just a few minutes to prepare it. We had no idea they would be through by this time.

The Court: How long will it take you to get your witnesses here?

Mr. Drinker: We can get a man here in ten minutes. I understood we would not be through until next Tuesday. Then Mr. Warrum thought he might be able to get through in two days and a half. That would take until Monday, anyway.

The Court: Gentlemen of the jury, under the admonition I have heretofore given you, we will take a recess for ten minutes.

(Whereupon, at 11:45 o'clock a. m., a recess was taken until 11.55 o'clock a. m., after which the following proceedings were had:)

3561 Rebuttal

(Whereupon, the plaintiffs offered the following evidence in rebuttal:)

Mr. Drinker: We offer in evidence, from the minutes of the International Executive Board, for the year 1915, the minutes of the meeting of September 13th, to September 18th, 1915. There were two copies of these papers produced. One is evidently a very short copy, and the other is a more detailed copy.

Mr. Warrum: If the court please, they went into this in the case in chief.

The Court: What is the purpose of the evidence?

Mr. Drinker: To show the power of the International President between board meetings.

Mr. Warrum: That was part of their main case, if
3562 at all. We never went into that.

The Court: What does this rebut?

Mr. Drinker: Mr. White's testimony that he did not have any power to do anything here.

The Court: Was that offered in chief?

Mr. Drinker: No, your Honor. I didn't have a chance to read it. It rebuts his testimony.

The Court: Very well.

Mr. Warrum: The defendants separately object to this testimony, because it is not rebuttal, but is a part of their main case, if at all.

The Court: Overruled.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. Warrum: We object on the further ground that it is a collateral statement.

The Court: Let it go in.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. Warrum: If we could see it before he offers it, we could frame a more intelligent objection to it.

The Court: Yes, I think so.

Mr. Warrum (after examining documents): Defendants separately object to the introduction in evidence of these excerpts from the executive board meetings, for the reason that they are not rebuttal, but are a part of plaintiffs' case in chief, if at all; and for the further reason that they
3563 have no probative value, and do not tend to throw any light upon the contention of the plaintiffs with reference to any issue in this case, and relate to a collateral matter.

The Court: Let it go in.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: The first one is the extract from the minutes of September 13th, page 22, entitled "West Virginia Case."

(Said excerpt from the minutes of the International Executive Board, so offered and received in evidence, is in words and figures as follows, to-wit:)

"West Virginia Case.

A further extended discussion was entered into regarding the appeal for financial assistance.

Board Member Haggerty consented to withdraw the appeal in favor of the report of the committee, with the understanding that if, between Board Meetings, the President of the International organization, under his prerogative as President, deemed it advisable to grant financial assistance to West Virginia, that could be done."

Mr. Drinker: The other portion is on pages 63 and 64 of the other document, the portion marked, beginning "The Committee's report was read," and so forth.

(Said excerpt from the minutes of the International Executive Board, so offered and received in evidence, is in words and figures following, to-wit:)

"The committee's report was read by Board Member
3564 Harlin.

Board Member Haggerty: In order that the matter be subject to first approval, I move that that part of the committee's report be tabled. That part sets down a definite policy on which we must act. I leave the matter in the hands of the President, so that he can act.

President White: I have been lenient with my prerogatives and have always recognized that I was but the servant of the Board, who are all in turn the servants of the organization. I do not understand that the committee's report in any way with the prerogatives set forth in the constitution, devolving upon the President.

Board Member Harlin: The report of the committee as read expresses my opinion; no argument, whatever, could change it. So far as I am personally concerned, I do not believe I would have the authority to attempt to curtail the well recognized authority of the President between Board meetings. In every case that arises between Board meetings, it is the prerogative of the President to exercise his judgment, subject to review by the International Board. In regard to this situation as it has been presented to us, this recommendation expresses my opinion; there has been no argument that would justify me in supporting a motion to strike out any portion of it. I intend to stand on the recommendation as read."

3565 S. T. MOORE, called as a witness in behalf of plaintiffs in rebuttal, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Will you give your name? A. S. T. Moore.

Q. Are you sometimes called "Buster" Moore?

A. Yes, sir.

Q. Were you in the employ of the Bache-Denman Coal Company at Prairie Creek during 1914? A. Yes, sir.

Q. Speak up loud so the last juror can hear. A. Yes, sir.

Q. In what capacity were you employed there?

A. I was in charge of the property down there at the time they had the battle.

Q. When did you go down there?

A. I don't just remember when I did go down there.

Q. Approximately, do you remember?

A. I had been down there a month or so before the fight came up.

Q. Were you there during the month of June and July preceding the battle? A. Yes, sir, I think so.

Q. You were in charge of the property there?

A. Yes, sir.

Q. And in charge of the men that were employed there at that time? A. Yes, sir.

3566 Q. Mr. Moore, have you been present in court during the testimony of the defendants for the last two days?

A. No, sir.

Mr. Warrum: If the court please, our minutes show that the testimony of this witness appears in the former record, and went in under the stipulation. Is that correct?

Mr. Lucas: That is correct, but he is going now to testify in rebuttal to the testimony adduced by the defendants for the last two days. If the court please, we want the jury to hear his testimony on this point.

The Court: Ask him some rebuttal questions.

Q. Mr. Moore, it has been testified here that during the period that you say you were there, preceding the battle of July 17th, there was a good deal of gambling, and a good deal of drinking on the part of the men under your employ. What have you to say with reference to that?

Mr. Warrum: The defendants object, because they went into that matter themselves, anticipating the defense.

The Court: He may answer the question.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

A. There was no drinking inside around the works to speak of. There might have been occasionally some fellow that come in there that had a drink before he got in, but so far as drinking inside was concerned, that was prohibited, and I don't think there was any drinking to speak of going on around there, because we watched that pretty close.

3567 Q. I don't believe the jury heard the last remark.

A. I don't think there was any drinking to speak of. There might have been some fellow come in there that had a drink. I don't think I ever saw anyone in there drinking. Of course, I wasn't there at night, but they had no way of getting whisky in there. There were lots of bootleggers at Frogtown and places like that, but those fellows were afraid to do business up there.

Q. What was the company's policy toward any men drinking there?

A. We would have got them out of there. We couldn't afford to have drinking in there under those conditions.

Q. What have you to say with reference to card playing and gambling?

A. If there was anything of that kind going on I didn't see it. There might have been a little after working hours, shooting craps, but not to my knowledge.

Q. Was gambling against the law?

A. We didn't have any law laid down as to that.

Mr. Warrum: We object to that, if the court please.

Mr. Lucas: I withdraw the question.

Q. During the time you were there were any local officers around the camp from time to time?

A. Yes, sir, occasionally. We didn't prohibit them from coming in. They could come and go as they wanted to.

Q. Who did you see there?

A. Well, I saw Jim Slankard once or twice, and maybe some others.

Q. Do you know a man named Davis?

A. Davis was there once, or I believe he passed

3568 through. I don't know whether he was there making an inspection or not, but he was there one time.

Q. Were any of your employes during that period arrested by these officers for disorderly conduct?

Mr. Warrum: The defendants object.

The Court: Objection sustained.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

A. There might have been. I don't know.
Q. Mr. Moore, there has been a good deal of testimony about the guns in the camp. What was the situation as to the number of guns and how they were handled?

Mr. Warrum: If the court please, Mr. Bache himself testified to the number of guns. It was taken up in chief, and they ought to be through with it. We object to it as not rebuttal.

Mr. Lucas: There seems to be an effort on Mr. Warrum's part not to have any rebuttal.

The Court: That is not the question. The question is whether it is rebuttal or not. As to how these guns were handled and the number of guns that were there, that has been testified to.

Mr. Lucas: Yes, your Honor, but Mr. Moore was there all the time, and I want him to state how they were handled during his period there.

The Court: He may answer.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

A. We kept the guns in the office down there, and we
3569 would give out guns to certain fellows to go to certain places and guard the property, and so. We kept them checked up, and there was no guns out except those fellows actually guarding. When a fellow came off duty he brought his gun up and turned it in.
Q. When they were on duty, where were the guns kept?
A. They were kept locked up in the office.

Mr. Lucas: I believe that is all.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness excused.)

JOHN S. SHALEEN, called as a witness in behalf of plaintiffs on rebuttal, having been duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Your name is John Shaleen? A. John S. Shaleen.

Mr. Lucas: If the court please, the situation with respect to this witness is the same as the preceding witness. I will ask him such questions as I consider rebuttal.

Q. Mr. Shaleen, did you take some men down to Prairie Creek No. 4? A. Yes, sir.

Q. On what day? A. April 15th.

Q. April 15th? A. Yes, sir.

Q. What had been the situation there prior to April 15th and subsequent to the day of the battle? Had there

3570 been any men in camp to your knowledge?

A. Not to my knowledge. There was a man come over there about 8 o'clock in the morning, and he said they had been there on guard.

Q. When you arrived with your men there was nobody at the mine? A. No, sir.

Q. Did some other men come later?

A. Yes, sir, about the 17th.

Q. On the 17th? A. Yes, sir.

Q. How many? A. 18.

Q. On the 17th, 18 more men came? A. Yes, sir.

Q. Was there any bootlegging around the camp?

A. Some, yes, sir.

Q. On the part of whom?

A. The only one I knew that brought anything in there was a fellow by the name of Blue Johnson and Milo Colo.

Q. Were they union men? A. I suppose they were.

Q. How many rifles or guns were there at the camp while you were there?

Mr. Warrum: The defendants object, if the court please.

The Court: Objection sustained. You went into that.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

3571 Q. What was your capacity there?

A. I was general foreman.

Q. General foreman? A. Yes, sir.

Q. Did you frequently see officers around there?

A. Yes, sir.

Q. Who were they?

A. Jim Slankard was there several times, and Mr. Fitzgerald, the constable, and Jim Davis, the deputy sheriff from Greenwood, used to come over once in a while.

Q. Were they there pretty constantly?
A. They seemed to make it their business to come over there pretty often.
Q. Did the men play any cards in there?
A. Not to my knowledge. I never did see them play.
Q. Did these officers that were there fairly regularly arrest any of your men for gambling? A. No, sir.
Q. What have you to say—you have heard the testimony of the defendants in the past two days? A. Some of it.
Q. What have you to say with reference to the shooting that has been described as having taken place within the mine property?
A. There wasn't a good deal of shooting at any time around there, either on the outside or inside.
Q. Either on the part of your men or the union men?
A. No, sir.
3572 Q. Was there any accidental shooting within the enclosure? A. Yes, sir.
Q. Please describe that.
A. One pay day while I was in the office, Bill Bohannon and Riley Bailey were accidentally shot.
Q. Describe that. Where were you when it took place?
A. In the office.
Q. It was pay day? A. Yes, sir.
Q. That was just outside the office? A. Yes, sir.
Q. Was there any other accidental shooting?
A. A guard named Plant, as we were going over to No. 3—there had been some shooting over there at night, and we were going over to investigate it, and he accidentally dropped his rifle on the rail of the railroad and it went off.
Q. Do you recall any shooting down around the pumping station at any time?
A. Yes, sir. One night someone shot in there. There was considerable shooting there and we investigated to see what it was, and the guard said someone had shot into him from across the creek and he had answered.
Q. Somebody had shot at him first? A. Yes, sir.

Mr. Warrum: If the court please, there may be perhaps some of the minor details of this testimony that were not offered in chief, but the defendants object and urge
3573 that all the conduct of the men, with reference to shooting and these various other things, were presented in their case in chief.

The Court: I think perhaps it was.

Mr. Warrum: We object to that as not rebuttal.

The Court: I will let it go in.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Q. Mr. Shaleen, do you recall an incident about some cows either being on or passing over the property, and some little girls wanted to take the cows across the property?

A. Yes, sir, I believe so.

Q. Describe what that was.

A. My brother came and asked me what he should do about letting them go through. I wouldn't say whether they were going through or whether they was already in there. I said, "Sure, let them go through." My brother saw that they went through. He went with them.

Q. That is all there was to it? A. Yes, sir.

Q. They were permitted to go on the property and get the cows or take them through, whichever it was?

A. Yes, sir.

Q. Did you have supervision over the guards that were posted around the camp? A. Yes, sir.

Q. Were any of them posted out on the public road?

A. None whatever.

3574 Q. Where was the outermost guard posted?

Mr. Warrum: That has been described in the evidence. The defendants object to that as not proper rebuttal.

The Court: I will allow him to answer.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

A. The furthest one away from No. 4?

Q. Yes, the one nearest the community or the public.

A. That would be up around the slope, practically, up around the Griffin pigeon hole.

Q. With reference to the road from Huntington, where was the nearest guard in connection with that road?

A. Right at the office.

Q. Right at the office? A. Yes, sir.

Q. Was that right on the public road or inside the mine property?

A. No, sir, it was quite a piece from the public road.

Q. Quite a ways from the public road? A. Yes, sir.

Q. Have you looked up the records of the company to find out about certain witnesses who have testified here for the defendants? A. Yes, sir.

Q. I will ask you how long a party by the name of Tom Skidgel was employed there? A. May I look at my notes?

Q. Yes. How long was a party by the name of Tom
3575 Skidgel employed by the company?

A. Tom Skidgel was employed from June 2nd to June 24th, inclusive, as a teamster, and he worked one day, July 8th, as a fireman.

Q. That was the extent of his employment by the company? A. Yes, sir.

Q. I will ask you about Cicero Phillips. How long was he there during that period?

Mr. Warrum: May I ask a preliminary question at this point?

The Court: Yes.

Q. (By Mr. Warrum) What is that you have in your hand?

A. A copy I made from the time sheet I made during the time I was there.

Q. A copy of the time sheet? A. Yes, sir.

Q. Did you make the time sheet at Prairie Creek yourself?

A. Yes, sir.

Q. You made it yourself? A. Yes, sir.

Q. And know it is correct? A. Yes, sir.

Q. And you have made this copy from that? A. Yes, sir.

Q. (By Mr. Lucas) You did that last night?

A. Yes, sir.

Q. Go ahead with your answer.

A. Cicero Phillips was a laborer from June 12th to
3576 June 24th, inclusive.

Q. He was there just two weeks? A. Yes, sir.

Q. How about Harve Shafer?

A. Harve Shafer was on the pay roll for July 11th, 13th and 14th, as a laborer.

Q. As a laborer? A. Yes, sir.

Q. That is all he was there?

A. That is all he was there.

Q. Now, Mr. Shaleen, did you hear Renzey Hollowell testify that Charley Cheek and Harry Dunlap wanted him to go over and shoot up Frogtown? A. Yes, sir, I did.

Q. Did you hear other witnesses describe that shooting as having taken place in July, on the Sunday preceding the day of the battle? A. Yes, sir.

Q. Was Renzey Hollowell in the employ of the Bache-Denman company at Prairie Creek in July? A. No, sir.

Q. When was he employed, according to your record?
A. June 8th and 9th.
Q. Just those two days? A. Yes, sir.
Q. Did you hear Mrs. George Hunter testify about a visit that Andrew Betts made to her house with his little
3577 girl when he was intoxicated? A. Yes, sir.
Q. As I recall it, it was early in April and shortly before the riot in April? A. Yes, sir.
Q. When does the record show Andrew Betts to have been employed by the Bache-Denman Coal Company?
A. May 12th to May 30th as a laborer.
Q. Just that short time? A. Yes, sir.
Q. He wasn't there in April when that incident took place? A. No, sir.

Mr. Lucas: I believe that is all.

Cross Examination

By Mr. Warrum:
Q. This memorandum you are testifying from or refreshing your memory from is a copy or a transcript that was made from the pay sheet? A. Yes, sir.
Q. That shows the days they worked and you paid them for? A. Yes, sir.
Q. Weren't there men there day after day that never worked at all and didn't get any pay for the time they were there? A. Absolutely none.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness excused.)

3578 T. A. Norris, called as a witness in behalf of plaintiffs on rebuttal, having been previously sworn, testified as follows:

Direct Examination

By Mr. Drinker:
Q. Your name is T. A. Norris? A. Yes, sir.
Q. What is your present position?
A. County probate judge.
Q. Did you live at Greenwood in 1914? A. Yes, sir.
Q. You were sheriff of Sebastian County at that time?
A. Yes, sir.
Q. You heard of the Bache-Denman trouble at Prairie Creek in July? A. Yes, sir.

Q. State whether or not, the night before that trouble, or the night before [hat]—I will state that the battle happened on Friday, the 17th of July. State whether or not on the Thursday or Friday night before that Mr. McLachlan called you up and had a telephone conversation with you over the phone?

A. I can't remember whether he did or not. I testified in this case once before.

Q. Did you testify to this: "I can not remember that he did. I can't remember. I don't think I had no conversation with anyone the night before"?

A. I testified to that. I don't think I had any conversation.

Q. Then you were asked: "And on Wednesday night,
3579 the second night before, did he have any conversation with you?" And you answered: "I can not remember that he did."

A. I can't remember that he did.

Q. And you were asked: "Did he or anyone else from Hartford on Thursday night, or Wednesday night, state to you that the scabs were shooting up Frogtown and want you to come over there and protect them?" And you testified: "No, sir, the first I knew of the Frogtown shooting was the day after the day following." Was that your testimony?

A. That was my recollection, the day after the shooting. I didn't have any conversation with him the night before.

Q. Did you state to Mr. McLachlan or anybody else in Hartford, in substance, that the Federal injunction covered any shooting that the scabs might do?

A. I understood that at the time, but I don't remember now exactly my answer.

Q. You don't remember what happened? A. No, sir.

Q. You answered: "No, sir, I would not have done that, I guess, because I understood at the time that the Federal injunction only covered the mining property." Is that your recollection?

A. That is my recollection of it. I don't know what answer I gave then. I don't remember.

Mr. Drinker: That is all.

Cross Examination

By Mr. Warrum:

Q. You were asked a few questions on cross examina-
3580 tion, were you not? A. I think so.

Q. And among those questions you were asked this: "Just a night or two before the battle you did have a talk with someone"?

A. I think the night before the battle, if I remember right, someone called.

Q. And your answer was: "Someone called me from Hartford and had a talk with me?" A. Yes, sir.

Q. And you were then asked: "But you don't remember who it was?" And you answered: "No, sir, and I don't remember what the conversation was." Is that right?

A. Yes, sir.

Mr. Warrum: That is all.

Redirect Examination

By Mr. Drinker:

Q. And then you were asked this question: "In that conversation did that party tell you that the scabs were shooting up Frogtown, or they were shooting over there, and ask you to come over?" And you answered: "That was not the conversation." Is that correct? A. That is correct.

Q. And your present recollection is there was no such thing as that? A. No such a thing as that.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness excused.)

3581 C. H. FINLEY, recalled as a witness in behalf of plaintiffs in rebuttal, having been previously sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Mr. Finley, what was the situation relative to the insurance on the property down there at Prairie Creek immediately after the riot on April 6th?

Mr. Warrum: The defense has not gone into that question of insurance at all. It is not proper rebuttal.

The Court: The only testimony was from the man in charge of the Coronado tipple, in regard to insurance.

Mr. Drinker: Can't we show what the actual situation was there, they having brought this up about the insurance?

The Court: At Coronado you can.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

Q. What was the situation with regard to insurance at Coronado after the riot of April 6th?

Mr. Warrum: If the court please, we didn't bring it up. They put Mr. Willsey on the stand, their own manager, and asked him about that. This is not rebuttal. This is a continuation of the very line of inquiry they were following in their main case.

The Court: That is not rebuttal of Willsey's testimony.

Mr. Drinker: Then we ask to re-open our case and put it in.

The Court: I will allow that to be answered, but only about Coronado.

To which ruling and action of the court the defendants,
3582 and each of them, at the time duly excepted and still except.

A. All the insurance policy we had, except about $5,000, were cancelled by the insurance agent.
Q. Why?

Mr. Warrum: We object to that as immaterial.

The Court: I think so.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Did your company collect that $5,000 insurance?
A. Yes, sir.
Q. What became of the money?

Mr. Warrum: The defendants object to that as immaterial.

The Court: Sustained.

To which ruling and action of the court the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker: I would like to show about the insurance on the other property. I don't want to have it referred to in the argument.

The Court: There is no evidence in regard to it except about the Coronado tipple.

Mr. Drinker: I want to be sure there will be no argument made on that ground in this case, because I am prepared to answer the whole business right here.

The Court: Any cross examination?

Mr. Warrum: No questions, your Honor.

The Court: Stand down.

(Witness excused.)

3583 FRANKLIN BACHE, recalled as a witness in behalf of plaintiffs in rebuttal, having been previously sworn, testified as follows:

Direct Examination

Mr. Drinker: This is not exactly rebuttal, and I would like, in view of the situation we got into over the question of the leases the other day, I would like to have Mr. Bache sum up his testimony so that the record will be clear under any theory of the measure of damages. It is not rebuttal. We will have to open the case for that purpose.

The Court: I understood Mr. Bache came back after that evidence was taken.

Mr. Drinker: Yes, but when we came to look over the testimony it was not in the condition so all the questions could be raised.

The Court: Be very brief about it.

Q. (By Mr. Drinker) Mr. Bache, what was the cost of pumping out No. 4 between April 6th and July 16th?
A. About $30,000.
Q. What was the value on July 16th of all the mines damaged, including the leases?

Mr. Warrum: The defendants object.

The Court: It is not rebuttal, but I will allow him to answer.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

A. $898,000.

3584 Q. What was the value on July 21st of all that same property, on the assumption that the leases had not then become cancellable? A. $575,000.

Q. What was the value of all that property after the leases were actually canceled?

Mr. Warrum: The defendants object to that. It was excluded before.

The Court: I will allow him to answer.

To which ruling and action of the court the defendants, and each of them, at the time duly excepted and still except.

A. $82,000.

Q. What was the value on July 21st of all of that property on the assumption that the leases were then cancellable?

A. $82,000.

Mr. Drinker: That is all.

Mr. Warrum: No questions.

The Court: Stand down.

(Witness Excused.)

Mr. Drinker: If your Honor please, I think we are through, but if you could give us until after recess, we could make sure of it. I had no idea that they would be through so early. It won't take two minutes. We have been trying to get some witnesses here in rebuttal.

The Court: I should like [verymuch] to close the case before noon.

Mr. Drinker: It won't take us five minutes to put in our testimony, if we have any further testimony.

3585 Mr. McDonough: We were under the impression, your Honor, according to Mr. Warrum's statement, that they would take 4 or 5 days.

The Court: That was their statement, but the court was confident, and I think all others, unless counsel for plaintiffs, that they could not take longer than today at noon.

Mr. McDonough: We do ask for that much consideration from your Honor.

Mr. Drinker: I didn't think they could possibly get through. Just look at them back there.

The Court: I did not think there was enough evidence in this case to run any longer than today at noon. That was my judgment.

Mr. Drinker: If your Honor can give us that much time, we would appreciate it very much. If you wish to adjourn now until five minutes till two, I will promise it will not take over five minutes.

The Court: Gentlemen of the jury, under the admonition I have heretofore given you, you may pass out and return at two o'clock this afternoon.

(Whereupon, at 12.25 o'clock P. M., a recess was taken until 2.00 o'clock P. M.)

3586 After Recess. 2 P M.

The Court: The jury is present. Proceed with the trial.

C. H. FINLEY, recalled as a witness in behalf of plaintiffs, having been previously sworn, testified further in rebuttal as follows:

Direct Examination

By Mr. Drinker:

Q. Do you know Pete Stewart, former President of District 21? A. Yes, sir.

Q. Have you seen him in town during this trial?

A. Yes, sir.

Q. Do you know Sandy Robinson? A. Yes, sir.

Q. Have you seen him in town during this trial?

A. Yes, sir.

Q. Where is Pete Stewart's office?

A. On the third floor of the Merchant's Bank Building.

Mr. Drinker: That is all.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness Excused.)

Mr. Drinker: We close, if your Honor please.

Mr. Warrum: If the court please, we would like to refile the motions that were filed at the close of plaintiffs' case in chief. We would like to have them filed at the end of the whole case.

The Court: What are the motions?

3587 Mr. Warrum: One is a motion to dismiss, and the other is a motion for a directed verdict.

The Court: I will hear you on the motion for a directed verdict.

3588 (After argument of counsel on the motion filed by the defendants to direct a verdict, the court instructed the jury as follows:)

The Court: Gentlemen of the jury, for a period now of two weeks, with the utmost care and patience you have listened to the trial of this case. You understand already, before I announce the doctrine to you, that in our courts of justice, where cases are tried as this case has been tried, the responsibility for the true and proper administration of justice, under the law, is equally divided between your body and the court. That is to say, your body and the court are merely instruments created by the law for the purpose of doing justice in our courts. Now, while the responsibility is, as I have said, equally divided, the nature of the duty as imposed upon the jury and upon the court is different entirely. It is the duty of the court to declare the law, and the duty of the jury to take the law precisely as declared by the court, and if there be any mistake made in any matter of law, that is a mistake of the court for which the jury is in no sense responsible. The jury is responsible, and is the sole judge of the weight of the evidence, the credibility of the witnesses, and the facts proven upon the trial of the case. And wherever the jury takes the law precisely as declared by the court and finds what the true facts of the case are from the evidence, and unites the law so declared with the facts so found in their verdict, just so long do we have a proper administration of justice under the law. But, if either one in the case, either the jury from any bias or prejudice, or anything except the endeavor to do equal and exact justice under the law

3589 misfind the facts, or find the facts to be other than the evidence above—that is, if for any reason they do that, or the court for any reason, through any bias or prejudice does not firmly, courageously and positively declare the law, then that is not an administration of justice under the law at all. And if either the jury, within its province, or the court within its province, becomes recreant to the trust that is reposed in them, we can have no administration of justice under the law, and our property and our rights and liberties will become unsettled.

Now, another duty of the court is to define the issue or issues,—that is, to state with such clearness that it is impossible for a single juror to misapprehend precisely what it is that, if a verdict be returned, that verdict determines. Now, I propose to state to you gentlemen what this case is.

There has been presented here a motion for an instructed verdict. That is a motion which appeals to the judgment of the court as to whether there is any such a case presented that, should the jury return a verdict in favor of the plaintiffs, the court, in the exercise of such sound judicial discretion as it may possess, could uphold that verdict. Because it is never worth while doing a useless thing. If there is a case here that, if you would return a verdict for the plaintiff, the court would uphold, then it becomes the duty of the court to submit that matter to you. If not, then the court must determine it as a matter of law.

Now, let's see what this case is. Bache-Denman, a cor-
3590 poration down here in Hartford Valley, and the Bache-Denman corporation, as I understand it under this evidence, was the holding company for these different mines that were operating down there, such as the Coronado and Prairie Creek No. 4 and Mammoth Vein No. 1 and Mammoth Vein No. 6 and so forth, whether that company owned all of this stock or not,—and it did not, I think, from the evidence, —but it controlled and operated all of these mines, and controlled and operated them for some period of time up until the fore part of the year 1914. For some time at least they had been operated as union mines; that is, mines where the miners working in the works had made a contract under what is known as the miners' wage scale, the terms under which they would work, and their contracts, as I understand it, were to last for a certain length of time, under the very terms of the contract. Mr. Bache concluded, as he had a right to do, that he would no longer operate, at least mine No. 4, on the union basis under this contract. The contract, I believe, from this evidence, according to its terms, had not expired. It was the intention of Mr. Bache, as I take it from his evidence, that he refused to be bound by the contract because he said it had been corruptly obtained, and the miners had broken it. But at this time there at least had been no acquiescence by the miners in that, and no judicial determination of it to put an end to the contract, but on its face it remained in force.

Mr. Bache had had years of experience in the mining business. He knew from this evidence, knew from his experience

as an operator, that to change his mine from union to non-union, or an open shop mine, meant trouble. And he
3591 was justly afraid of that, because we all, at least, have enough understanding to know that. So that in order that he might know what was going on, some detectives, or one detective at least, was employed, and I think two men with him, and armed guards were employed so his non-union miners might not be interfered with in their work.

About the first of April he intended to open up this mine No. 4, Prairie Creek, as a non-union mine. That country down there was, as has been shown here, 100 per cent, perhaps not union men but union men and sympathizers; and it had been union for some time before this. Now, this of course was resented by the union men, and one thing led to another down there in that valley until matters almost too horrible to relate transpired, arson, murder, and the most heinous crimes on the calendar were committed, and whoever were guilty of them, by all reason, ought to have been justly [dealth] with, and all of those who aided in it, participated in it, encouraged it or abetted it, were responsible for it. Not only was there two lives lost, but property of large value was destroyed and rendered useless, owned by the Bache-Denman Company, through ownership of the corporate stock in the corporation. This case, as well as any other, gentlemen of the jury, illustrates the fact that so called civilization, much as we may boast of it, is a mere veneering that is put on people and remains there, when controlled properly by the law. That at the bottom, after all, as here, the civilized men with whom we associate and work every day are just as much savages as the clouted aborigine, and people must understand that, and when they put these human pas-
3592 sions and emotions into effect, they must abide by the consequences, because they must know the character of the animal that man is when restraint is thrown off, and he reaches out his talons. Whoever is responsible for those murders, if they have not been [dealth] with, it will be a blot on the fair name of this state until they are made to expiate their crime, and whoever destroyed this property down there is responsible for it, and were liable for it, and ought to be made to respond in damages. Such things can not happen in our country and not leave a stain or blemish. You can not shake them off anyway except by bringing the parties to justice.

Now, after all, it is this present action that we are now engaged in trying. All rules regarding property in a state are governed by the laws in a state, because of the fact that

under the confederacy that happened or existed in this country before we had a national government, the states composing and comprising this confederacy were foreign to each other, as in a sense are the states today, but they were in the habit of levying duty on the goods passing from one state to another, and that was one of the chief causes that impelled the making of the national constitution and making our national government. States could not agree, so there had to be some power over and above it. So in the making of that constitution, the framers, and by the way, gentlemen, whatever you may hear or whatever you may read, that body of men knew more about the science of government, that made that constitution, than has ever existed in this or any other country before or since that time. Everyone who really
3593 loves his country, and its institutions, sees that document tampered with or treated lightly with a great deal of aversion. In that constitution they placed what is known as the commerce clause. That is, in making a government of limited and enumerated powers, one of the things was that the Congress should have a right by its laws to regulate commerce between or among the states, with foreign nations and the Indian tribes. The Indian tribes being dealt with at that time as sovereign Indian nations. In pursuance of that power conferred by the states, that participated in the making of that document, and each and all of the states which have signed that document, came into the union of this country, and irretrievably submitted themselves, by power of Congress, to regulate commerce between states. In pursuance of that, what was known as the Sherman Anti-Trust law was made, and that provided every contract or agreement or conspiracy in restraint, or entered into to restrain or monopolize interstate commerce was wrong, and prohibited by the Sherman Anti-Trust law, and everyone that is wronged in his property rights by reason of any such contract or conspiracy has a right to recover from the wrong-doer three times the value of the property.

Now, as this case is brought under that provision of the Constitution and under this section of the Sherman Anti-Trust law, that is the only hold this court has on this proposition. I have stated to you positively, I can not make that too plain, that the people who did this, these deeds down here, ought to pay for it, and suffer something, but speaking now about the common law—about the law that is common to all of our states,—this case, if there is any trouble with
3594 this case, it is because of the grasp that this court has on such propositions. It is not that I believe at all in

what I say that many of these union miners, District No. 21, at least, did take a part in this matter down here, and did conspire to do it—there is no question about that at all, but in a case of this character, what must the plaintiffs prove by the greater weight of all the credible evidence in the case? For in a criminal case there is nothing proven except what is established beyond a reasonable doubt, and if there is not evidence enough to convince the minds of the [jorors] trying a criminal case that defendant, beyond a reasonable doubt, is guilty, then there is nothing proved. In a civil case there is nothing proven except that which is established by the greater weight of all the credible evidence in the case. So the plaintiffs in this case, in order and before the plaintiffs can ask you for a verdict against the defendants, or any of them, they must establish the existence of a conspiracy to do what was done. They must establish that anyone against whom they ask a verdict and judgment knowingly participated in that conspiracy. Third, they must establish by the greater weight of the evidence that that conspiracy—not that property was lost through the working out of that conspiracy—but that that conspiracy was forced for the direct purpose of restraining or monopolizing interstate commerce. Almost every act that is done in this country in one way or another affects interstate commerce, but it never was the intention of Congress that anything except something that directly affected interstate commerce was to be taken out from
3595 under the control of the states, or we would have no state litigation at all, and it would be all federal. So there is always, in all of these cases, a line of demarcation. The Supreme Court, not on the same evidence, but the same case, and most of the same evidence, placed this case on one side. There are many others. And you can readily see why that must be. For instance, suppose there is a great deal of cement used in this city, and a cement plant is located over here in Oklahoma, and for some reason the people of this city, or any part of them, say, "Now, we are not going to allow that cement to be used in this city," and they should go out here with a train load of cement, or a car of cement, and participation and interference with that is a direct interference with the interstate commerce and violates this law, and it don't matter the extent of interference, so it is a direct interference. But on the other hand, suppose that having a grudge against the company manufacturing that cement over there for something that they have done, and some man from your side here should go over and wreck that plant because they had a grudge against them, while it might just as com-

pletely destroy the shipment in interstate commerce, it would not come under this law.

Now, I don't know, and I am not going to pass upon but one question in this case, whether the evidence in the case as it now stands contains any sufficient evidence to connect the general organization, these hundreds of thousands of members that were down here, or not, and for this reason: There is much to be said on both sides of that question, and I have thought about it much since this trial com-
3596 menced. In the first place, they had a right to unionize the entire country, that is, the national union, and they not only under this evidence have unionized in may places the coal miners in many of the states, but in some foreign countries. Now, before they can ask anyone to become a member of that organization, that member had a right to say, "What obligation do I assume, on what terms am I going to unite with you; what power are all these hundreds of thousands of union men going to have to bind me to what they do, or bind the property that I contribute or the money, to become a member?" Now, they put into their constitution here, and the Supreme Court in passing on the matter has contrued that constitution, that whenever the Executive Board that represents all of these men, put there for that purpose, speaks, whatever they do in the matter binds every union man, but until they do act, no one except the individual who was directly connected with the thing, was bound, and the national organization was not bound. Of course there was in the former case a very strenuous controversy as to the right to proceed against this union in its union name, because it was unincorporated, and it is the first case, as stated, of that character. But taking the law, the Sherman Anti-Trust law, and its terms, and there never was to my mind much of a controversy on that. It was intended to reach all kinds of bodies organized alike, corporate bodies or not, and we all agree now that that is the law, and I will not now speak of that.

I have sat here, and I hardly think as patiently as you gentlemen, but with some patience on my part, as far
3597 as I am concerned, and listened to this evidence clear through. What does it establish? What does it prove by the greater weight of all the credible evidence in the case? It proves that the union district, all these people who came in contact with this situation down there, felt themselves outraged at declaring mine No. 4 would operate non-union, and they said we are not going to permit that, and this evidence would tend to show they were ready to carry it to any extent

not to permit that. Now, the trouble of this case was, and the trouble with this case will always be this: The mining of coal comes under the law of the state; it is in no sense interstate commerce. Coal itself when mined may become the subject of interstate commerce, but is in no sense interstate commerce. A man can mine all the coal he wants with the intention that he will ship it to some other state, yet there is no interstate commerce in that whatever; because if so, and the framers of the Constitution couched it in such language, unless in the Cotton case where they were monopolizing all of the cotton industries,—so this conspiracy was formed here which resulted in the destruction of this property and the loss of the lives of these two individuals, and was formed to prevent Mr. Bache from working his mines non-union. Now, if Mr. Bache had given a bond that he would not ship a carload of coal out of this state if they would let him work his mines there peaceably, these union men would not have done that. They were bound and determined he should not work that mine non-union. Is that not what is established by the evidence here? It is true Mr. Bache, if he had been permitted to have gone ahead there and mined coal, undoubtedly
3598 would have shipped some coal in interstate commerce, but that is not interstate commerce. I don't care how much he intended to ship in interstate commerce. Now, you take the utmost that is here contended, and it is this; and I have watched carefully for it, that had it not been for this conspiracy Mr. Bache would have increased the operation of those mines by non-union men one-third or sometimes almost one-half more than they were producing, working under the union scale, and that this coal would have gone into interstate commerce, and would have extended the field in which it might have been distributed and sold in competition. Now, we had evidence of that, but that again is not interstate commerce. What is established by this case is that there was a conspiracy down there, and as a result of that conspiracy this property loss occurred. Of course everything tended to work it up. You take in cases of excitement and prejudice and so forth, and if Mr. Bache had said, "I am not going to ship any more coal in interstate commerce, with these men [men] working for me I can mine it cheaper and can sell all of my coal in Arkansas," still I don't think he could, but if he had said those things, they would have said, "No, you can not work non-union, because we are union men, and we must uphold our union, we must uphold our right to better our conditions and our wages and protect ourselves, and we will not allow you to work non-union." Now, to my mind that is this case.

I don't think it can ever be a different case, but while I think the conspiracy, at least to a certain point, is amply established, I don't think that there is evidence here that it was the direct purpose to interfere with or monopolize
3599 interstate commerce. It was for a different purpose, and that was a mere incident to it.

In seeing it as I do, and treating the entire matter as I do, —now, there are little scraps of testimony here and there, but after all it is what reasonable minds would agree upon as to their intention, and that was that they were not going to allow him to operate that mine. But the operation of that mine, the bringing up of coal, and the coal when brought up, or the fact that it would in future be shipped in interstate commerce, is not any interference with interstate commerce from the earliest case, The State vs. Person, 128 U. S., which is one of the most illustrious cases, and I have been looking at that, and that is my idea about the merits, and I will have to sustain this motion for an instructed verdict.

Mr. Drinker: Will you allow us to refer specifically to the things that you have in mind that our argument was not addressed to? I had not the slightest idea—

The Court: I will say this, Mr. Drinker, that since this case commenced I have been studying it, and I am quite confident I will not be able to work out any other conclusion. I think we will have to conclude this case here.

Mr. Drinker: I will have to bow to your Honor. We save an exception.

To which action and ruling of the court the plaintiffs, and each of them, at the time duly excepted and still except.

The Court: You understand, gentlemen of the jury, I
3600 am directing this as a matter of law. If there is any-[thingwrong] about it, you gentlemen are not responsible, but the court is.

Now, gentlemen of the jury, this is Saturday evening, or Saturday night. You have been here two weeks. As I said, you have been very patient in the trial of a somewhat protracted case. At the command of your government you have come here and have performed a very important service for your government. The court thanks you for your promptness in attendance, and you will be excused from further consideration of this case, and excused for the present term.

(Thereupon, under the instructions of the court, the jury returned a verdict in words and figures following:)

3601 The above and foregoing was all of the evidence introduced in this trial, or offered to be introduced.

After the [instroduction] of the above and foregoing testimony and at the conclusion of all the testimony, the defendants filed in open court, the following motion, moving the court to direct a verdict for the defendants, which said motion is as follows:

Motion for Directed Verdict.

In the District Court of the United States Western District of Arkansas Fort Smith Division.

Coronado Coal Company, et al., Plaintiffs,
No. 553 vs. Law.
United Mine Workers of America, et al., Defendants.

The defendants severally move the court to instruct the jury to return a verdict in their favor and in favor of each of them, for the following reasons:

1. Because the evidence submitted by the plaintiffs is not sufficient to sustain a verdict in favor of the plaintiffs against said defendants, or either of them.

2. Because it appears from the plaintiffs' own evidence that if there was any conspiracy, as alleged in plaintiffs' complaint, that the plaintiffs were parties thereto, and participated therein, are in pari delicto and are not entitled to recover.

HENRY WARRUM
G. LOVE GRANT
Attorneys for Defendants.

3602 Upon consideration, the court sustained this motion, and the plaintiffs at the time excepted to the action of the court in sustaining said motion.

Thereupon, by order of the court, the jury returned in open court the following verdict:

"We, the jury, find the issues for the defendants."

To the action of the court in directing said verdict, and the return of the same, the plaintiffs at the time excepted.

(Approval of Bill of Exceptions by District Judge.)

After the foregoing proceedings were had before the said John C. Pollock, presiding, the plaintiffs were severally by the court granted ninety (90) days from the 27th day of October, 1923, in which to make, tender, have approved and file their bill of exceptions in this cause.

And now come the several plaintiffs, who tender and present to the Honorable John C. Pollock, presiding Judge by assignment, the bill of exceptions in this cause, and pray that the same may be settled, signed, allowed and sealed by the court, and made a part of the record; the said bill of exceptions having been approved by counsel for both plaintiffs and defendants, and having been examined by the undersigned, as the Judge who presided at said cause, and found to contain all of the evidence adduced at the trial, with all the objections made and exceptions saved to the introduction of the evidence, and all rulings of the court, and also found to contain the rulings of the court in excluding evi-
3603 dence, and the evidence so excluded and all rulings of the court during the progress of the trial, and it being further found by said Judge that said bill of exceptions is in all things complete and accurate, the same is hereby settled, allowed, signed, approved and sealed by the court, and the Judge thereof, and made a part of the record in this cause, and the Clerk of the court is hereby ordered and directed to file the same as the bill of exceptions in this cause.

Done on this 3rd day of November, 1923.

JOHN C. POLLOCK,
United States District Trial Judge.

(Stipulation of Counsel approving Bill of Exceptions.)

It is hereby stipulated by and between counsel for plaintiffs and the defendants, that the above and foregoing is a true and correct bill of exceptions.

JAMES B. McDONOUGH,
Counsel for Plaintiffs.
HENRY WARRUM,
Counsel for Defendants.

3604 Petition for Writ of Error.

(Filed in U. S. District Court November 3, 1923.)

To the Honorable John C. Pollock, Judge Presiding by Assignment over the District Court of the United States, for the Western District of Arkansas, Fort Smith Division and to the Said District Court and the Circuit Court of Appeals of the Eighth Circuit:

Come now the plaintiffs and each of them herein, to-wit: Clyde H. Finley, Receiver of each of said companies, and Coronado Coal Company, Denman Coal Company, Mammoth Vein Coal Company, Bache-Denman Coal Company, Hartford Coal Company, Sebastian County Coal Company, Mammoth Vein Coal Mining Company, Mammoth Vein Royalty Company, Prairie Creek Coal Mining Company, by themselves, and by Clyde H. Finley, their Receiver, who are plaintiffs in error in the Circuit Court of Appeals of the Eighth Circuit, and who were plaintiffs in this cause numbered 553 Law in said District Court and the Fort Smith Division thereof, in which cause the plaintiffs herein were plaintiffs, and the United Mine Workers of America, United Mine Workers of America, District No. 21 and others were defendants, the defendants being specifically named in the third amended complaint in this cause, and the amendments thereto, and respectfully pray for a writ of error to the end that this cause may be reviewed by the Circuit Court of Appeals of the Eighth Circuit, and the said plaintiffs below and plaintiffs in error in the Circuit Court of Appeals, and each of them, separately and severally deem themselves aggrieved by the action of the court in refusing to permit the jury to render a verdict in favor of the plaintiffs in this cause, and by the action of the court in directing a verdict in favor of the
3605 defendants, and by all the various other errors occurring on the trial of the cause at the regular June 1923 term of said court, and from October 15, 1923, to October 27, 1923, being days of said court, and the petitioners herein, plaintiffs below and plaintiffs in error in the court of appeals, respectfully state that judgment was rendered on the verdict of the jury in this cause, which verdict was given by the direction of the court in favor of the defendants in said cause, and said defendants in the court below are defendants in error, in the Circuit Court of Appeals, and the plaintiffs in error, the plaintiffs below, also feel aggrieved by the orders, rulings, judgments and proceedings had and made in

connection with said cause, which errors of the Court in the trial of said cause will more fully appear in the assignment of errors, which assignment of errors is herewith filed and made a part of this petition for writ of error. The petitioners, who are the plaintiffs in error in the Court of Appeals, and who were the plaintiffs below, respectfully state that the court committed errors resulting in a judgment in favor of the defendants in the court below for costs and in a denial of the right of the plaintiffs to recover in said cause, and the plaintiffs herein verily believe and allege that they are entitled to a recovery against the defendants, and are entitled to have a jury award the plaintiffs damages by reason of the wrongs of the defendants set forth in the third amended complaint, on which this cause was tried.

Wherefore, the plaintiffs in error, the plaintiffs in the Court below, severally pray that a writ of error may be issued in their behalf out of the United States Circuit Court of Appeals for the Eighth Circuit for the correction of the
3606 errors herein complained of and fully set out in detail in the assignment of errors herewith filed and that a transcript of the record, proceedings and papers in this cause duly authenticated, as required by law, may be sent to the Circuit Court of Appeals of the Eighth Circuit, and that upon a hearing in said Court of Appeals the cause be reversed and remanded, and that the plaintiffs in error, the petitioners herein, have all other and further relief as may be proper in the premises and under the laws of the United States.

H. S. DRINKER, JR.,
JAMES B. McDONOUGH,
Counsel for Plaintiffs in Error.

Affidavit.

State of Arkansas.
County of Sebastian—ss.

I, Clyde H. Finley, on oath state that I am the Receiver of the plaintiffs, and one of the plaintiffs as Receiver, in the above entitled cause, and I further state that the matters and things set forth in the above and foregoing petition for writ of error are true to the best of my knowledge and belief, and that the amount in controversy exceeds the sum of Five Thousand Dollars ($5000.00) exclusive of interest and costs.

CLYDE H. FINLEY.

Subscribed and sworn to before me this 1st day of November, 1923.

ANNA ALTMILLER, Notary Public.

(Seal)

My commission expires April 16, 1925.

Petition granted. Writ of Error allowed, November 3rd, 1923.

JOHN POLLOCK, Judge.

3607 Assignment of Errors.

(Filed in U. S. District Court November 3, 1923.)

Come the plaintiffs in error, named in the above entitled caption, being the plaintiffs in the cause below, and file the following assignment of errors appearing upon the record in this cause, which plaintiffs in error aver to have occurred in the proceedings and upon the trial of said cause, and for which the judgment should be reversed:

1.

The court erred in sustaining the motion of the defendants for a directed verdict, which motion, omitting the caption and signature, is as follows:

"The defendants severally move the court to instruct the jury to return a verdict in their favor and in favor of each of them, for the following reasons:

"1. Because the evidence submitted by the plaintiffs is not sufficient to sustain a verdict in favor of the plaintiffs against said defendants, or either of them.

"2. Because it appears from the plaintiffs' own evidence that if there was any conspiracy, as alleged in the plaintiffs' complaint, that the plaintiffs were parties thereto, and participated therein, are in pari delicto and are not entitled to recover."

2.

The court erred in holding that the testimony did not show a conspiracy in restraint of interstate commerce.

3608 3.

The court erred in sustaining the objection to the testimony of the witness, H. L. Good, relative to the strike in the Irwin coal field, Irwin, Pennsylvania, in 1910 and 1911.

4.

The court erred in sustaining the objection by the defendants and in excluding the following offer of proof on the part of the plaintiffs in connection with the witness Good and other witnesses:

"Mr. Drinker: We are going now to prove the allegations of the complaint that this strike down here was merely a part of a nation-wide conspiracy to throttle non-union coal in interstate commerce. The conspiracy began way back. Plaintiffs allege these incidents, and have skipped a large part of the first ones, and we now call this man to show what happened in the Irwin strike, that was run by the national organization, and then we are going to West Virginia and show what happened there, and in each case with one witness or two, and then out of the journals, articles to show that this was a conspiracy between the national organizations and the districts to throttle non-union coal in interstate commerce."

5.

The court erred in sustaining the objection by the defendants and in excluding the following offer of proof on the part of the plaintiffs in connection with the witness Good, and other witnesses:

"Mr. Drinker: Your Honor observed the paragraphs in which it is alleged as a necessary step, not as a necessary step but as steps which the other side say they took in connection with this conspiracy, and we want to show there was a continuing conspiracy between the national organi-
3609 zation and the officers thereof, and the district organization and their officers and everybody connected with this organization, to throttle non union coal in interstate commerce."

6.

The court erred in sustaining the objection to the following question asked the witness, H. L. Good:

"Q. Are you familiar, from your personal knowledge, with the events which happened in the strike in the Irwin field in 1910 and 1911?"

7.

The court erred in sustaining the objection to the following question asked the witness, H. L. Good:

"Q. Are you familiar with the methods employed by the United Mine Workers in conducting that strike?"

8.

The court erred in sustaining the objection to the following question asked the witness, H. L. Good:

"Q. Did you see the members of the United Mine Workers, local and district organizations, present, participating in those events?"

9.

The court erred in sustaining the objection to the following question asked the witness, H. L. Good:

"Q. Did you see acts of violence instituted by these members, and representatives during that strike?"

10.

The court erred in sustaining the objection to the following question asked the witness, H. L. Good:

3610 "Q. Are you familiar with the methods employed by the United Mine Workers in connection with the strike to insure publicity of their side of the affair?"

11.

The court erred in sustaining the objection by the defendants, and in excluding the following offer of proof on the part of the plaintiffs, in connection with the witness, Good:

Mr. Drinker: I will make an offer. I offer to prove by the witness on the stand and other competent witnesses that in the years 1910 and 1911 a strike was conducted in the Irwin field of Pennsylvania, endorsed by the National organization of the United Mine Workers, that the purpose of that strike was to organize the then open shop mines in that district, for the purpose of protecting operators operating union mines in adjoining states, that the strike was conducted with violence, intimidation, deliberately by the United Mine Workers for that purpose, that the national organization knew and approved of these matters, that this was a step in a nation wide conspiracy conducted by the United Mine Workers in all of the districts, and the [mambers] thereof, for the purpose of throttling non-union coal, or open shop coal, and keeping it out of interstate commerce."

12.

The court erred in sustaining the objection by the defendants, and in excluding the following offer of proof on the part of the plaintiffs, in connection with the witness, Good:

"Mr. Drinker: We offer to prove by this witness and other competent witnesses that during that strike the United Mine Workers deliberately conducted a campaign of publicity with the intent to deceive the public into believing the facts to be different from the facts [deliverately] circulated
3611 to the public, for the purpose of inflaming the miners of the districts, and getting a public opinion on their side, and that this was a part of the conspiracy in question, and further that the system of publicity, their methods or acts, and the whole matter of conducting the strike was of such a nature as to show on their face a similarity with the methods employed in the strike in Arkansas in 1914, as to produce the inevitable conclusion that it was all a part of the same scheme and conspiracy."

13.

The court erred in sustaining the objection by the defendants, and in excluding the following offer of proof on the part of the plaintiffs, in connection with the witness, Good:

"Q. Mr. Drinker: I further offer to prove by this witness the facts alleged in paragraphs 15 and 22 of the complaint."

14.

The court erred in sustaining the objection by the defendants, and in excluding the following offer of proof on the part of the plaintiffs, in connection with the strike in the Irwin field:

Mr. Drinker: Now, if your Honor please, I am going to offer,—I offer, from the United Mine Workers Journal, an article on page 1 of the issue of June 16, 1910. This relates, I will say, solely to the Irwin field, showing the authorization of the strike by the International organization."

(Which article, so offered in evidence, and excluded by the Court's ruling is in substance as follows, to-wit:)

3612 "Hayes Pays Visit to Irwin Field.

Greenburg, Pa.

The coal strikers in the Irwin field have received hearty encouragement from the international officials of the United Mine Workers of America, who were here as an investigating commission.

'We have come into the Irwin field, and we expect to stay camped here until we have every man organized,'—declared

Frank J. Hayes. 'All we ask of you men is loyalty to yourselves and to the cause and we will do the rest,' said Mr. Hayes. These words bring the most cheering encouragement to those who have known little or nothing of industrial freedom.

Looked Over Situation.

The investigating commission composed of Vice President Hayes and International Executive Board Members Thomas Haggerty, Geo. Dagger, T. J. Smith and Thomas Powell, returned to Indianapolis after spending a day among the miners of this field.

Vice President Hayes and Board Member Haggerty held enthusiastic meetings at Latrobe and Greensburg, while the other members of the commission with the assistance of District Vice President Von Bittner of Pittsburg conducted the meetings at Irwin and Madison.

In the course of his addresses at Latrobe and Greensburg Vice President Hayes said in part:

"We have come here from the highest governing body of the United Mine Workers of America to investigate the progress of the strike in the Irwin field so that we may be in a better position to render you such aid as may bring this warfare to a successful end. This strike has got to be won for we cannot afford to lose it.

3613 I pledge to you my fellow workmen my hearty co-operation and sympathy, and that when I return to Indianapolis I will do every thing in my power to bring aid and assistance to you struggling men. It is necessary that you make this strike a success if you want to have a taste of freedom in the future.

Under union conditions you cannot be robbed as you are now, and unionism means new life, new hopes and blessing never before enjoyed."

15.

The court erred in sustaining the objection by the defendants, and in excluding the following offer of proof on the part of the plaintiffs in connection with the strike in the Irwin field:

"Mr. Drinker: I offer from the United Mine Workers Journal an article on page 1 of the issue of July 7th, 1910, and an editorial on page 4 referring to that article. Now this article is offered for the purpose of showing that the Inter-

national organization, which published the Journal through its Executive Board, gave publicity to its membership—the constitution requiring that it be read by the local secretaries, that notices be read by the local secretaries,—gave the publicity to its membership of articles describing methods used in connection with strikes conducted by the national organization which on their face are inconsistent with any attitude of law abiding, or inconsistent with anything but the use of violent methods. That is offered for the purpose of showing that for three years prior to the strike in Arkansas the United Mine Workers circulated to its membership information in articles which amounted to an instruction to the district members as to the methods approved by the national organization in strikes, which it admittedly conducted,
3614 for the purpose of showing an incitement of the organization to use similar methods in other strikes. x x x

Mr. Drinker: This will be followed by other articles bringing it right down to date. x x x

Mr. Drinker: This is to show an approval by the National organization of the methods used in Arkansas in 1918."

(Which said Journal articles so offered in evidence, and excluded by the court, are as follows, to-wit:)

"Situation in the Irwin Field.

(By Van Bittner, Vice President District 5, U. M. W. of A.)

This is the fifteenth week of the great strike that is being waged by the miners of Westmoreland county against the greedy corporations who, through their tyranny, had established slavery in a worse form than it was in the South before the now historical Civil War.

It was the first week in March that the miners of this field decided to strike a blow for freedom for themselves and their families, and they are surely putting up a fight that would make any man proud that he is a member of the United Mine Workers of America. Yes, these men who are fighting under the most adverse conditions are displaying a spirit that is astonishing to their fellow trade unionists the country over.

With that saying of Patrick Henry "Give me liberty or give me death" as their watchword, these men are determined to fight and fight as only American workingmen know how to fight when they are oppressed by the slave driving employer.

These men are determined to go on and on until their efforts are crowned with victory, until they receive the wages

[are] are given conditions of employment which the other union coal miners of this country enjoy. At no time since the inauguration of the strike have the men been so determined and at no time have they been so confident of success. They are going to continue the strike indefinitely, and they say that the fight has just begun. One of the many notable features of this strike is the fact that of the over twenty thousand men that come on strike not one of them have returned to work, altho the companies have offered some good jobs and sums of money if they would only betray their fellow men and go to work. The coal operators are circulating stories thru their newspapers that they do not know why the men are out on strike. They set forth the claim that there were no grievances that they knew of and that they treat their men better than their operators. But, my friends, go into Westmoreland County and see the awful condition and watch the miners prohibited from going to the United
3615 States post office to get their mail. This is the place where men, women and children have to secure a pass from the guards before they are allowed to leave the place. They can't even go to church before they have secured one of these passes. They read, "Allow Mike Kousic to go to church." (Signed) Brown, Supt. What do you think of this in free America? This place is known as the Siberia of of America.

The Jamison Coal Company evicted the miners from their homes and then went into court and secured an injunction preventing the United Mine Workers from furnishing tents for the evicted strikers to live in. These are the mines where Edward Soppett, a former organizer for the United Mine Workers is general superintendent. He was a failure as an organizer, but surely Soppett is a howling success as a slave driver.

Although the conditions are bad at Jamison, the [some] conditions prevail at many other places in Westmoreland county, where the coal companies have become so desperate as to drive men to work at the point of a gun.

The worst feature of the strike is the fact that nine of our people have been murdered by the companies' thugs and it looks as tho the court is giving these murderers special privileges. Among those killed were three women, wives of our striking miners, who were shot down like dogs by the drunken hirelings of the coal operators.

The operators are shipping men from Cleveland, New York and Chicago, where they have employment agencies estab-

lished at these points. The men are deceived by the people who are in charge of the agencies, and when they find out the true state of affairs they refuse to work. Very few of these men are coal miners, most of them being tramps, and at best they are only a bill of expense to the companies. Of course, as in nearly every strike that workingmen are engaged in, the courts are being used as a mere cat's paw and do just what the operators ask them to do in order that the worker may be defeated. Every injunction that has been asked for by the coal operators has been granted by the courts, and these injunctions do everything but restrain a man from breathing, and we expect them to do this if they can devise a way of cutting off the fresh air from the strikers.

The policy of our organization has been that our people shall obey the law, but shall exercise all the rights guaranteed them under the Constitution of the United States. As a result of this policy, the injunctions have not interfered with the successful conducting of the strike. I believe this policy is the best that can be adopted during a strike, for just as soon as the courts learn that their injunctions are not doing the work they were intended for they will stop issuing them. This policy will continue in Westmoreland County even tho one half the coal miners in that field are thrown into jail for contempt of court. It is better that they be in jail than that they be scared into doing something unlawful and wrong just because a judge tells them to do it.

There is no doubt but what the Manufacturers' Asso-
3615 ciation is behind this fight in the Irwin field, and as a result the battle will be long drawn out and should receive the support of every organized workingman in the county. Westmoreland County is becoming another Colorado. Women with babies on their arms are being thrown into jail, young girls are arrested and thrown into jail by the deputies simply because they are daughters of the strikers. The sheriff has issued orders to his men to shoot to kill, after a mixup that was caused by a drunken guard last week at Export. The sheriff sent out his deputies and gave them orders to arrest every person they saw upon the public highway, and as a result of this eleven women were arrested and taken to Greensburg and thrust into jail. The next morning they were all discharged and the company had to pay all costs.

These many things are simply causing the men to remain more firm than ever. It simply acts as a spurt to cause them to ahead. The coal companies have done their worst and

they now realize that they are up against a fight that means better conditions for the coal miners. They may evict the miners from their homes, they may murder them as they have been doing, but when the smoke of battle is cleared away, slavery will be abolished and unionism will be established in Westmoreland County never to be stamped out."

(From the Editorial page):

"A dearth of news from the Irwin field, except the communication from Vice President Van Bittner, leaves us unable to speak of the situation in that field, except the miners are still standing firm and determined to win."

16.

The court erred in excluding the following article from the issue of the United Mine Workers Journal dated June 23, 1910:

"There is nothing new to report from the Irwin field in Pennsylvania, and the boys are hanging together in a tenacious manner and under adverse conditions. The mounted cossacks and the company thugs are earning their measly pittance protecting the rights—supposedly—of the corporations who hire them."

17.

The court erred in excluding the following article from the issue of the United Mine Workers Journal dated June 30, 1910:

3617 "The Irwin, Pa., field has also assumed a peaceful attitude. By this we mean the newspapers have quit sending out scareheads about the violence done by the strikers most of such violence being done when they sat down to write about it and drawn from an inflamed and perverted imagination."

18.

The court erred in excluding the following article from the issue of the United Mine Workers Journal, dated August 4, 1910:

"News from the Irving Field.

Finleyville, Pa., July 25, 1910.

Editor Mine Workers Journal:

"The issue of the 21st inst., was certainly full of good things, and any union coal miner who neglects to subscribe for and read the journal is, in my mind, a very poorly in-

formed union man and his unionism is very shallow. Indeed, a union man who refuses or neglects to support the paper that represents his craft does not understand or appreciate the far reaching ideals and principles of the trade union.

I see a novel scheme has been introduced into the Irwin district to enlist the services of the clergy to do something for those true and loyal souls who are on strike there. They certainly need intelligent help and influence, and certain it is that there is a proper channel to pursue in order to reach the sympathy and reason of the preachers. These men have much influence, but will they be stirred to such a depth as to use it? We will wait and see. But a few words about the methods adopted in that strike. A deficit of over $1,600 for the last quarter placed against the Journal is a standing disgrace to the union men of America and 3618 they ought to blush for shame to be told that such a condition exists. There are a large number of men who call themselves union men because they are compelled to pay dues. That is where their unionism commences and ends. That is the sum total of their unionism, and if their dues were not checked off in the company office they would not pay them and their unionism would not make a shadow.

A prayer was read by Mr. F. Feehan at a mass meeting at Madison and is being read by other men at other places in the strike zone. I have this to say about praying: "Your prayers may get you to heaven—altho I doubt it sincerely—but they will never win the strike in the Irwin field. Your prayer was an appeal to the clergy. They have responded in "prayin", but will it appeal to the coal barons, the tyrants, the persecutors, the oppressors, the murderers, and assassins? No, my friends, your prayer will not bring those lawless and brutal men to time or reason. There may be a time for prayer but some men of Irwin believe that that time is not now. That time is past and gone. The trouble is, the majority of you have prayed too often and too long, until that business is useless. Rather this is a time to fight, to deliver the hardest and swiftest blows possible, hit wherever you can, above the belt if you can, below the belt if you must. By all means mix your "prayin" with hard fighting and if you must neglect either stick to the fight. The miners over in Nova Scotia fought and struck for a year—and many hundreds of them are striking yet. They used all fair and lawful means to win, and hundreds of them have won, but it was not won by "prayin", but by [sactifice] and fighting.

But I don't blame the men for praying provided it will bring intelligent action to their aid. It must ever be remembered that God is on the side of the biggest and best drilled
3619 army, especially if they shoot straight and keep their powder dry, and by the way we working folks are not so dumb and simple minded as we were taught we ought to be many years ago, as it was neither God nor the prayers of Godly people than won the wars of 1776 and 1865. Oh, no, it was numbers, bullets and shells, courage, sacrifice, shooting straight and often. Oh, yes, that's it boys, keep up enthusiasm, send plenty live agitators into the strike field, hold meetings often, tax all miners working in Pennsylvania so much each pay day, keep the stomachs of the men, women and children from want, and send cast off clothing into the field.

If the above is carried out to the letter I'll guarantee the strike will be won (prayer or no prayer) and instead of asking the Lord to forgive those notorious thugs, murderers, assassins and gun men, judges, sheriffs and other state and county authorities, I would, if I did pray at all, ask the Lord to damn and exterminate such despotic tyrants from the face of the earth. However, I am not going to start praying for such purpose because praying is no good anyhow. That is all false, fake and ridiculous. And lastly, I do not ask God or anybody else to do for you that which you can do for yourself. Remember these judges and sheriffs are not Gods. They hold their position because of the dense ignorance of the workingmen of Westmoreland County. Use your ballot hereafter as you strike, turn out of office all rotten and unfair officials, whether they are judges or sheriffs. Put not the friends of the working class in office and legislature, but put labor and true sons of toil there. They have the education, intelligence and ability, so quit praying, fight hard and vote right, is the wish of yours,"

3620 19.

The court erred in excluding the following article from the issue of the United Mine Workers Journal, dated August 11, 1910.

"Miner Shot Dead in Riot at Export.

In a [desparate] hand to hand battle last night between the authorities and strike sympathizers at Export coal mines, near here, a striking miner was shot and killed and State Policeman George Davis of Troop B, Wilkes-Barre was seriously injured.

Nearly a score of others were injured and the situation is grave."

20.

The court erred in sustaining the objection to the testimony of the witness, Ballard S. Carney, relative to the strike in West Virginia, in 1912 and 1913.

21.

The court erred in sustaining the objection to the following question asked the witness, Ballard S. Carney:

"Were you a president of a local union of the United Mine Workers in that district at that time?"

22.

The court erred in sustaining the objection to the following question asked the witness, Ballard S. Carney:

"Did you personally conduct, on behalf of the striking miners, the campaign against the operators in your particular district?"

23.

The court erred in sustaining the objection to the following question asked the witness, Ballard S. Carney:

3621 "Did you participate in the attacks on the coal operators as the leader of your local union and the surrounding locals in connection with that strike?"

24.

The court erred in sustaining the objection to the following question asked the witness, Ballard S. Carney:

"Did Mother Jones live in your house during that strike, after she was arrested?"

25.

The court erred in sustaining the objection to the following question asked the witness, Ballard S. Carney:

"Did you assist Mother Jones in circulating these reports of the atrocities practiced on her by the company thugs and gunmen at the time she was living in your house?"

26.

The court erred in sustaining the objection to the following question asked the witness, Ballard S. Carney:

"Did you know of the methods used by the United Mine Workers, did you know of your own personal knowledge, the methods used by the United Mine Workers during that strike to obtain publicity for their side of the case?"

27.

The court erred in sustaining the objection to the following question asked the witness, Ballard S. Carney:

"Did you, yourself, have part in the circulation of such publicity?"

28.

The court erred in sustaining the objection to the fol-
3622 lowing question asked the witness, Ballard S. Carney:

"Did you take the articles to the Labor Argus?"

29.

The court erred in sustaining the objection to the following question asked the [witnesses], Ballard S. Carney:

"What is the newspaper called the Labor Argus, and what part did it play in the propaganda conducted with that strike?"

30.

The court erred in sustaining the objection to the following question asked the witness, Ballard S. Carney:

"Mr. Carney, did you participate in efforts to prevent the non-union miners from working in the mines in Paint and Cabin Creeks at this time?"

31.

The court erred in sustaining the objection by the defendants, to the following offer of proof on the part of the plaintiffs, in connection with the witness, Ballard S. Carney:

"Mr. Drinker: I want to make an offer in connection with the testimony of this witness. I offer to prove by the testimony of this witness and other competent witnesses, that the facts disclosed by the testimony of the witness in answer to the question suggested would, on their face, be of such a nature as to result in the inevitable conclusion that the strike there conducted was part of a fixed purpose and set design, by agreed upon methods, for the suppression by the United Mine Workers, in combination with all its districts and members and local unions, to prevent non-union coal from being shipped to other states in competition with that mined by union operators in those other states, for the purpose of in-

creasing the cost of production in the non-union mines,
3623 and for the purpose of protecting the union operate
and the relations between the mine workers and the union operators in such other States."

32.

The court erred in sustaining the defendants' objection, and excluding the following offer of proof by the plaintiffs, in connection with the West Virginia strike:

"Now, if your Honor please, I offer from the United Mine Workers Journal the editorial contained in the issue of November 7, 1912, page 4, for the purpose of showing the West Virginia strike in 1912 and 1913 was authorized and conducted by the National organization."

Which said article so offered in evidence, and excluded by the court, is in words and figures as follows, to-wit:

"The men on strike deserve to win, are determined to win. The National organization is supporting them to the extent of its resources, the membership everywhere is backing up the officials. What is the answer?

Victory."

33.

The court erred in sustaining the defendants' objection, and—excluding the following offer of proof by the plaintiffs, in connection with the West Virginia Strike:

Mr. Drinker: I offer in evidence the following articles from the United Mine Workers Journal for the year 1912 and 1913 for the purpose of proving the facts sought to be proved by the questions to the witness just on the stand; and for the further purpose of proving that the strike in West Virginia
in 1912 and 1913 was planned and conducted by the
3624 by the National organization of the United Mine Workers in conspiracy with the members of that organization and its district branches and local branches for the purpose of preventing the shipment in Interstate Commerce of coal mined in non union and open shop mines in West Virginia and so that such coal might not come in competition with the coal mined by union operators in Ohio, Pennsylvania, Indiana and other States than West Virginia, for the purpose of increasing the cost of production of the West Virginia non-union or open shop operators, in order to interfere with such shipments; for the further purpose of showing a thoroughly conceived system of camouflaging the public as

to the true purpose of such events, and in order to keep public opinion on the side of the mine workers; for the purpose of showing in connection with the testimony by the witness just on the stand a deliberate circulation by the United Mine Workers of description of events known to be false, circulated for the purpose of deceiving the public and the authorities in connection with those events; for the further purpose of showing, by the publication by United Mine Workers International Executive Boards of these known false statements, and a deliberate incitement to the District organizations thruout the country to stop, by all necessary methods, legal or illegal, the shipment of non-union or open shop coal in Interstate Commerce, wherever such was necessary to carry out the prime purposes of the organization to unionize every non-union mine in the country, regardless of methods or cost."

(Said articles from the Mine Workers Journal, so offered in evidence, and excluded by the Court's ruling, are, respectively, in words and figures as follows, to-wit:)

(From the United Mine Workers Journal, issue of August 1, 1912, page 1.)

3625 "Terror Reigns in West Virginia."

Charleston, W. Va. July 27.

Three companies of state militia from Mount Cretna, Pa., arrived by special train shortly before noon today and marched on the Paint Creek mining section, where a dozen men are reported to have been killed in fighting between Baldwin detectives and striking coal miners. No complete fatality returns were available today, but a mining official fresh from the scene of the trouble replied to questions:

'Hell has broken loose. We hope the soldiers will put a stop to it.'

The official refused to discuss the situation further.

The private guards of the mining companies are believed to have instituted the bull pen and other repressive measures.

The known dead are William Stringer and Gus Pinson, private guards, William Phaup, chief of the Baldwin detectives, is at Sheltering Arms hospital with bullet wounds in both arms. He will recover. The miners' losses in yesterday's fighting around Mucklow are not known. Adjutant-

General Elliott and twenty-five men of company C are encamped near Mucklow, but the territory is too big for them.

For a distance of twelve miles around the mouth of Paint Creek the center of one large company's operations, the inhabitants are said to have lapsed into a state of primitive savagery, spurred on by the depredations of the private guards. Frightful stories of attacks on defenseless women and raids on homes reached here. That more than two men were killed on both sides was considered certain by men who came out of the troubled region today. They said the 3626 woodsmen had joined with the strikers in the war upon the private guards. Every ravine affords ground for a deadly ambush. The militiamen unfamiliar with the ground and unaccustomed to the guerilla warfare of the backwoodsmen cannot hope to cope with the situation except in large numbers.

Six hundred miners and hillsmen fought against several hundred private guards in the engagement near Mucklow yesterday. Over 3,000 rounds were fired. The miners are [desparate] and their attack centered on the company's stores. Their outcome of the fighting is not known in Charleston. Communication with the Paint Creek section is possibly only by foot, all wires being down. Travelers into the interior take their lives in their hands.

That the fighting was renewed today was considered certain. The frantic call for state troops made by the mine owners was interpreted here as meaning that the miners more than held their own in previous engagements, and that the lives and property of the company officials were threatened."

(From the United Mine Workers Journal, issue of August 8, 1912, page 1.)

"Bloody War in West Virginia."

(G. H. Edmunds.)

It has been quite a while since I wrote to the Journal about the strike in the Kanawha fields of West Virginia.

We have been so very busy that no time could be found for correspondence. At this writing the strike is in its most critical period. In my second letter to the Journal last May I pointed out the guard system and how it was being inaugurated in the Paint Creek zone. We also called the atten-

tion of the sheriff and the Governor to the dangers of
3627 tolerating the guard system in those fields. Now, no one will deny that we were correct in our deductions. Even the Governor has come around to our way of thinking. I have been away on business for the organization for 12 days, so I can only give such a report of the recent shooting on the creek as has come to me from the press and general public. What I can glean is that the miners, after an honest effort to avoid trouble, after vainly appealing to the sheriff of Kanawha county and to the Governor repeatedly, and repeatedly being refused protection from the armed guards, who were committing all manner of outrageous depredations against the strikers, their wives and children without the vestige of an excuse, also from unlawfully evicting the people from their homes; after appealing to the courts and judges running away to keep from hearing their cases; after being unable to get murderous guards to trial, and after every conceivable dirty trick had been played against the miners imaginable, they finally decided to protect themselves.

They seem to have adopted the tactics of the revolutionary fathers of American freedom. No details are known. The results are also in doubt. Suffice it to say that a battle occurred on Paint Creek the 25th of July, 1912, long to be remembered by the guards of that creek. Some say 35 were killed, some say 18 were killed and 35 wounded. As stated in the outset, we do not know which is correct, but we do know that it was hell on Paint Creek that night and day.

The citizens have at last awakened to the actual condition on Paint Creek. When the miners were being assaulted and murdered by the guards. and when they appealed to the Governor for protection, he said he could do nothing for them; but just as soon as Guard Phopp was shot and Springer
3628 was killed the Governor sent the soldiers from the national encampment at Gretna, Pa., to the scene of the trouble on Paint Creek. (Puzzle: Why does the Governor protect the guards and won't protect miners?) Is that the doctrine of the boss bull mooser of West Virginia? If so, please save us from the bull moose party in the beginning.

The soldiers are on the creek, but the guards are running things up that way at this writing. It seems that the soldiers are simply helping the guards; or in other words, are standing guard over the guard system and are not controlling the situation, as it was thought they would do upon their arrival.

The miners have no quarrel with the militia, or the guards either if they (the guards) will mind their own affairs and not molest the strikers in their legal rights. But I will again predict that unless the guards behave themselves they will have a hot time on Paint Creek. All of the miners in the Kanawha Valley are aroused as never before over this strike, and if it has come to the place where they are driven to the rifle, they will certainly use it to perfection.

On the other hand, if the guards are removed I believe all trouble will cease. But the miners are not going to stand for their wives, children and officers being mistreated and even killed and then have no legal recourse. It has been proven in this strike that the workingman has no rights that any one need respect.

Take, for instance, Justice Crawford, who has been found guilty to assaulting a helpless woman and sentence has been passed on him, yet he is allowed to exercise the function of a justice of the peace in Kanawha County. He still tries and sentences the miners.

Cannot the county of Kanawha get along without Crawford? Or is there a law that allows a convicted official to exercise the functions of his office? If that is the case,
3629 then I say, shame on the State of West Virginia for having such a law upon its statute books. The Cincinnati Enquirer of the 31st of August had an article where in the striking miners were accused of firing on the soldiers, but it is not true. If the soldiers were fired upon, it was not done by the miners; but we have every reason to believe that it was the guards who fired on the soldiers, and if the Governor will remove the guards (which he can do), there will be no more firing in that territory. Will the Governor do it? In the interest of the public peace, will he do it?

More than thousand miners voluntarily came to Charleston to see his Honorable Excellency, the Governor, but they found that that worthy was away, supposedly at Huntington. Mother Jones and John Brown, who is a candidate for the Legislature on the Socialist ticket, addressed the mass meeting of miners.

The today's Mail published an article that the sheriff had written a letter to the [adjustant-general] asking him to declare martial law in the strike zone.

Times are still hot up the creek.

(From the United Mine Workers Journal, issue of August 15, 1912, page 3):

"3,000 More Go Out On Strike.

Charlestown, W. Va. Aut. 10.—Still more serious became the strike situation in the Hanawha Valley today when 3000 coal miners employed in the non union mines on Cabin Creek laid down their picks, making the total number of striking miners on the Kanawha coal fields above the 5,000 mark. In the Cabin creek field, the miners walked out without
3630 making demands upon the coal operators, [asseting] that they would refuse to longer work under the conditions existing on that creek, but—they are expected to insist upon the employers' recognition of the union mine workers' organization, the same demand made by the striking miners on Paint Creek, and the removal of the mine guards. In addition to the general strike on Paint Creek, which has been in progress since last April and the present condition of the strike to the mines on Cabin Creek, 1,400 miners are idle at Boomer, Fayette County, in close proximity to the strike scene. The miners at Boomer walked out Friday because of the refusal of the mine owners to meet their demands in connection with the semi-monthly pay day. The strike at Boomer is regarded as a local affair and it is asserted that the miners quit work in violation of their wage agreement with the mine owners.

Officials of the miners organization have been insistent that the strikers return to work, but to the present time they have failed to heed the instructions of their leaders. A meeting will be held at Boomer on Sunday and it is probable that the charter of the Boomer local will be revoked unless the men return to work.

While there has been no disturbance in the strike territory today following the strike of the Cabin Creek Miners, the situation is the cause of much alarm. Every company of the states national guards has been employed in the Paint Creek valley to prevent a recurrence of the riots between the armed miners and the Baldwin guards employed by the coal companies, but if there is a clash on Cabin Creek the same forces, and it is deemed probable, the guardsmen will have to be divided. It is recognized by the militia officers that the miners on Cabin Creek are as well armed as are the miners in the Paint Creek section and they are just as bitter in condemning

the guard system. Local stores reported the sale of
3631 many rifles to visiting miners today.

"Mother" Jones, one of the strike leaders, who initiated the strike movement on Cabin Creek, when she spoke to 800 miners at Eskdale on Thursday, stated today that the guards on Cabin Creek had assaulted a score of the miners since yesterday morning. She further said that the national organization of mine workers would be compelled to care for the 3000 or 4000 striking miners and their families from the Cabin Creek section. The mines on Cabin Creek have been operated on the open shop plan since 1904, when the miners' union in that fall was destroyed. Since that year no effort has been made to organize the miners on that creek but the coal operators in the adjoining organized field have complained bitterly against being forced by the miners to compete in the markets with coal produced by the non-union labor on Cabin creek.

The strike on Cabin creek was a severe disappointment to Governor Glasscock, who had been making an effort to bring together the contending forces on Paint Creek. The action of the Cabin creek miners further complicates a situation that appeared almost ready for solution.

The two companies of the national guard which were stationed at Peytonia and Sterling, Boone County, where an agreement was reached between the miners and operators, were ordered home this morning. But the order may be rescinded at any moment. These two companies were on duty for more than two weeks."

(From the United Mine Workers Journal, issue of October 24, 1912 Page 1.):

"Standing Like a Stone Wall.

(By G. H. Edmunds.)

Martial law was kept on until the coal operators evicted
3632 the strike leaders from their homes, and then it was declared off. The "Army" officers are very busy denying that the militia took part in the eviction of the strikers, but every one knows better. Tents have arrived from Cincinnati and a box car load of large, new tents are enroute from Clearfield, Pa. The union has closed a deal with a lumber company for the quick delivery of several hundred thousand feet of lumber, and houses will be built to shelter the women and children, while the men live in tents.

Strenuous efforts are being made by the companies to fill their mines with scabs, but the union has been very successful in keeping the number down below the danger point, where there were 1,500 men working before the strike, there is less than three hundred working now.

The strikers are determined to win out if it takes ten years. We ask all mine workers and sympathizers to advise people to stay away from here. It is reported that the governor had pardoned the thirty-five men from Dorothy, who were sentenced to sixty days in jail for asking other men not to work in the mine while the strike was on.

No better example can be given of the soul of a coal baron than that of the case of Albert Woods, a colored miner who lived on Mr. Cable's works on Cabin creek. His father-in-law, an old man, ninety-five years of age, forty-eight years of the ninety-five were spent as a slave to the Cable household. This old man was lying sich unto death. He depended upon his son-in-law for help and attention. Al Woods had to bathe the old men daily and administer to his wants. Mr. Cable tried to drive Woods back to the mines, and upon his refusal to go, he was out in the road, bag and baggage. His old father-in-law was left there to suffer and die which he did in a few days after, and after death Woods had to
3633 go to the governor before he was allowed to go to the funeral. Isn't it horrid to think of such things as this?

But the worst part of this sad story is the wife of Woods is expected to become a mother in a very short time. Such is the soul of a coal baron. Old man Isaacs gave free gratis forty-eight years of his life to Mr. Cable, but yet is not satisfied—he despoils the old man's daughter.

Yet this same man is the builder of Y. M. C. A.'s and a "Christian" man, and a rock-ribbed, died-in-the-wool Republican. Now, striking miners, don't budge an inch until after November 5. We must rid this county of these political parasites, so stick to your oars; we are bound to win because we are right."

(From the United Mine Workers Journal, issue of October 31, 1912, page 1):

"The Guard System in Disguise.

Militiamen to do Private Guard Duty.—

The strike of the miners is reaching its most critical state. So far every movement of the operators has proven a boomerang. The Baldwin guards pushed the miners beyond their

2263

power of endurance and forced them to rise in their might and put the guard system out of business in Kanawha County. When the Baldwin guards were no longer able to control the situation, the militia under the governor's "peace proclamation" were brought in to protect the Baldwin while they built forts and fortifications. When this method failed the governor declared martial law, and though biased and one-sided, it failed to break the ranks of the striking miners Legalized anarchy and brutality has failed, military despotism has failed and now the powers that be realize that
3634 they must resort to other methods to accomplish their object. The military authorities abused their authority and evicted the miners from their homes, thinking by this method they would discourage the strikers and force them to go back into the mines, but their actions only added fuel to fire and [annned] the already smouldering spark of revolt into a flame as unquenchable as death. The miners in this district will never submit to the brutalities of the guard system again, the tax payers of the state are tired of paying the state militia $5,000 a day to do guard duty for the coal barons. The military despotism supported by the tax payers,was becoming as unpopular and obnoxious as the guard system, so something else had to be done. General Elliott, the coal baron and the governor have again met in private consultation and hatched up another beautiful little scheme. Every move the governor has yet made was the result of one of these secret council meetings with the operators and their attorneys. The latest move to break the strike is to use the militia as private watchmen for the operators to be armed and organized under some of the militia officers. These so-called watchmen will be nothing more nor less than a Baldwin detective agency in disguise as it will be composed of the renegade members of the militia who have stooped so low as to hire to the Baldwin strike-breaking agency. This simply means one more plot hatched in secret between the governor, the Baldwin, the county officials and the coal operators to break the present strike. Both the miners and the mine workers' organization should watch this latest move of the operators and their tools. The Crisis has been reached and the militia in plain clothes is the last card the masters have to play, trump this play and the strike is won. The miners cannot expect soldiers in plain clothes under pay and instructions from the coal operators to be any fairer to their
3635 side of the controversy than were the Baldwin thugs, whose places they are taking. Free speech and the right of assemblage is promised, but the miners have learned from past experience that the promises coming from such a

source cannot be trusted. Such determination as has been displayed by the miners on Paint Creek and Cabin Creek will win the victory. The output of coal in the strike zone does not amount to the average run of one mine, the transportation men being brought in are green men and are costing the operators much more than they are making out of their work, and at this time it is impossible for the coal companies to find men enough to work their mines. What few men they are able to deceive into this section only work a few days before they become acquainted with the situation and leave. A move may be on foot, and we learn that it is, to bribe or buy some of the men to betray their fellow workers. A man who will betray his class in a fight like this is a foul traitor and should be dealt with without mercy. The miners have this strike won, all they have got to do is to stay with it, and we feel confident they are going to do that. Labor Argus."

(From the United Mine Workers Journal, issue of December 26, 1912, page 1, Column 3):

""Mother" Jones, who is the central figure in this struggle, has been holding meetings the past two weeks in New York, Cleveland, and Cincinnati, and has a number of meetings billed after the holidays. She has just returned from Washington where she went in the interest of the miners. "Mother" Jones is never idle, always planning new methods to give publicity to the strike and telling the truth 3636 about conditions here. The operators fear the truth, and if they dared to chloroform this venerable, old fighter for human rights they would consider their position more secure. The operators have gone to the subservient governor and pleaded for him to deport "Mother" Jones, but for once the chief executive acknowledged a lack of power to serve the interests. The coal barons had better learn that it is dangerous to distort the truth through their prostituted press to make the public believe something that is not true. The truth is sometimes slow to assert itself, but sooner or later it will triumph."

(From the United Mine Workers Journal, issue of February 13, 1923, page 1):

"Our Strike is West Virginia.

Sixteen Killed in Mine Battle; Score are Injured.

Strikers in West Virginia Fields Drive Back Company Guards, But Suffer Loss.

Charleston, A. Va. Feb. 10.

Sixteen men are dead, including twelve miners and four mine guards, after a desparate battle in Kanawha county coal fields today. Twenty or more were injured.

Five companies of state militia reached the troubled zone tonight. One of the dead, James Hendrix, a striker, was found on the mountain top overlooking Ronda, W. Va., with a bullet through his body. Hendrix held field glasses in his hand and a rifle was found by his side.

All trains of the Chesapeake & Ohio Railroad into the strike territory tonight are equipped with machine guns. The gun is screwed to the rear platform of a coach as a precaution against night attacks. It is manned at all times and
3637 ready for instant use.

With the presence of the militia, rioting has ceased. Rumors reached the militia late tonight that an attack would be made tomorrow and the militia prepared for it.

A critical condition exists. Exact details are not known in Charleston. However, it is hoped that with the coming of the militia disorders may stop.

Striking miners marching toward Mucklow were met in the mountains by a posse under Fred Lester, a former captain of the West Virginia National Guard, now in the employ of a coal company. A sharp engagement followed. A bookkeeper and two mine guards were shot dead and several others wounded. Lester and his men were slowly driven back, fighting all the while. Reinforcements from other mine companies, railroad police and deputy sheriffs, joined Lester's men, but with little success. The miners steadily advanced, pouring a hot fire into the ranks of the officers.

The fighting continued throughout the afternoon. The last telegraph wire into Mucklow, belonging to the Chesapeak & Ohio Railroad, was out yesterday and it was difficult to communicate with the strike district.

Guard Officer Hurt.

The guards killed are William Radcliffe, James Vance, and Bernard Crockett, Fred Bobbett, Bookkeeper for the Paint

Creek Collieries Company, reported killed today, is still alive tonight, but has little chance for recovery. Another of the wounded is Lieutenant R. L. Taylor of the National Guard, who had been investigating conditions in the strike district. Eight strikers were captured and brought here tonight, charged with rioting.

3638 Another company of militia was ordered to proceed from Fayettville for Mucklow. The militia is in charge of Adjutant-General Charles D. Elliott. The members of the military court which acted during the last two periods of martial law have departed for the scene."

(From the United Mine Workers Journal, issue of February 13, 1913, Page 8):

"Forcing Revolt.

(By Frank Lodvinka.)

Every day marks a new leaf in the history of the West Va. Miners' struggle, and in time to come the miners' strike in the Mountain State will mark the tragic pages in the great struggle between Capital and Labor. The world will then judge for itself, and pass the final verdict, and there is no question of doubt that the West Va. coal barons will be branded as the greatest tyrants of humanity in the twentieth century.

Let us give the liberty loving public some proof of our assertion.

Friday, January 31, 1913, the guard bill was discussed before the Legislative committee. Mr. Knight, a famous corporation lawyer, and Mr. Sanders, a former Judge (in our opinion a very poor one), represented the privileged class. Mr. Houston and Belcher represented the wage slaves of W. Va. the arguments advanced by the representatives for the privileged class, simply made the guard system in W. Va. imperative. Why—? Let us analyze this question from past experience, from the workingmen's standpoint, and the answer will be this. The maintenance of the guard system is for the purpose of the operators to rule, ruin, exploit, and kill every spark of liberty. Actions of this character
3639 must be supported with Gatling and Winchester guns.

The representatives for the Mine Workers logically convinced the members of the Legislature that the maintenance of guard system in W. Va. is for the sole purpose of preventing the Mine Workers from organizing and joining the

United Mine Workers of America. This fact the two representatives of the privileged class did not deny.

We advised the W. Va. operators to study the world's history, and beware of repetition of history.

He who desires to rule or ruin and assume the position of Louis XVI will met his fate.

In order to inform the general public that the action of the W. Va. operators must be supported by guards and machine guns, here is one illustration. On January 31, 1913, one car load of strike breakers was delivered at Cabin Creek with the following fortifications: Ten guards with weapons and two Gatling guns on each end of the car. Let us ask all the operators in the U. S. A. who recognize the organization and do business with the same, "Is this condition of affairs necessary for any employer who wants to treat his employees as human?" No! Only the W. Va. operators are forced to support their barbaric actions with machine guns, and disgrace the civilization of the 20th century.

Go on with your despotic actions W. Va. Coal Barons! You will reap the full harvest of your sowing.

The organization of the United Mine Workers of America is a humanitarian institution. Who ever begins to fight the United Mine Workers of America will go down to unconditional defeat, as the motto of our organization is "One and Indisoluble."

3640 Operators of W. Va. take notice.

Every coal Baron who opened a fight against the United Mine Workers of America went down and out in bankruptcy.

Every Coal Baron who opened a fight against the United Mine Workers of America went down and out in bankruptcy.

Who is next? That is for the W. Va. Coal Barons to answer.

The strike on Cabin and Paint Creeks is in excellent condition, the striking miners are as determined as ever. Why should they be otherwise? Nearly one-half million men stand behind them."

(From the United Mine Workers Journal, issue of February 20, 1913 page 4):

"Statement by Vice President Hayes on West Virginia

Situation.

The members of the miners' union in the strike field of West Virginia are in no way responsible for the anarchistic conditions existing in that state at this time. The rioting was started by hired gunman and guards for the purpose of influencing legislation against the miners and to secure the adoption of a bill providing a state constabulary and other vicious measures now pending in the West Virginia legislature. The authorities seem more concerned about protecting the dividends of the slave-driving corporations than they do about dealing out justice to the men who produce the wealth of West Virginia. Hired sluggers and gunmen, better known as guards, have been terrorizing the miners and their families in this region for years. They employ the same method to keep out the organization as the criminals in New York employed in carrying on their nefarious work, and some of the so-called "leading families" of West Virginia are contributing to these gunmen and sluggers for the purpose of
3641 keeping the miners of West Virginia in a state of absolute slavery. We have proof that many men are kept in the mines in the strike field under armed guard and are forced at the point of a gun to work in the mines; and, moreover, several of these men who were imported to the strike field under misrepresentation have been shot and brutally assaulted in attempting to escape from their industrial taskmasters. We have many affidavits in our possession proving the correctness of this claim, and at this time we have a resolution in the U. S. Congress calling for a federal investigation of conditions in the mining fields of West Virginia, and when this investigation is made we will prove that miners have been murdered for protesting against their wrongs; that their wives and daughters have been brutally maltreated and assaulted; that peonage exists, and that peonage exists, and that the constitutional guarantees of free speech and free press do not exist in the non-union fields of West Virginia.

Our organization deplores violence as a method for adjustment of labor disputes, and we have at no time advised our people to violate the law, but it is common knowledge that the gun and the club are the chief factors non-union coal operators employ to keep the miners in a state of servitude. Such conditions sooner or later are bound to produce the anarchistic state of affairs we now see in West Virginia.

I am satisfied that Mother Jones and others who were arrested yesterday, charged with instigating the outbreak, had

nothing to do with it, and that if it is possible for them to receive a fair trial they will be immediately released.

The miners on Paint and Cabin creek are striking for the right to belong to the organization, a right guaranteed by the law of the state; the right to have checkweighmen on all tipples to see that the miner receives correct weight
3642 for his coal, another right guaranteed by the law of the state. The miner also wants the right to spend his meager earnings where he pleases instead of being forced to spend it in the company store and pay two prices for the articles he buys. He also wants a living wage and humane treatment as well as the abolition of the guard system, and it goes without saying that there will never be industrial peace in the mining fields of West Virginia until these objects are attained. We will spend every cent in our international treasury, collect a million dollars or more by assessment and tie up every non union mine in the country, if need be, in order to redress the wrongs of the West Virginia miners, and in saying this I express, not only my own view, but the view of President White and our entire Executive Board."

(From the United Mine Workers Journal, issue of February 20, 1923 page 7):

"Rumor of War From West Virginia.

The press has been full of scare headlines of new outbreaks, rioting and other unlawful acts, judging from these reports there must be a crisis coming. No doubt there is, judging from what we know of West Virginia. The reports, however, are not at all authentic. We have in the past three months seen reports similar to these, about the outbreak of the men on strike, how they had shot and murdered men, women and children, shot up trains and resorted to all unlawful acts known, and when a careful investigation was made into these rumors they had proven to be false and intended to influence the public against the striking miners, and where shooting has taken place it has been proven on numerous occasions to have been the paid emissaries of the coal companies who have done the shooting, and so these late reports are not to be taken seriously; in fact, we are inclined to
3643 think they have been at their old game.

The men are determined to win this fight and are not taking any chances of resorting to any unlawfulness. We believe the miners in the Paint and Cabin district of West Virginia are as fine a lot of men and law-abiding citizens as can

be found in any of the coal camps of this country. Many of them are born and raised in these camps and have become used to the brutalities of the coal operators, and it is this that has been the main cause that their patience has not been exhausted before this. The operators have again made their appeal to the governor of the state for troops, but so far as we are able to learn none have been furnished as yet. The new sheriff of Kanawha county of West Virginia, where the struggle is waged, is working with the operators even to the extent of inducing men to go to the strike fields to scab, to take the bread from the mouths of hungry babes. Think of it! you who elected this man to preserve order in this county, and it is just such officers as these that are to blame for such conditions. How can such officers inspire confidence when he is openly allied with the forces that own and control West Virginia. 'Protect property' is the cry; never mind the starving men, women and children, and bear in mind the word "starving." It is not used to express the condition that exists now, because there has been less starving among these families this winter than in previous years. This has been proven beyond the shadow of a doubt, and this is why the West Virginia miners will win.

Oh, my friends and brothers of the mighty army of the working class. I've seen this struggle as it is in reality the past three months. It is not a vision. Often when mingling with these strikers have I thought of and pictured in my mind what has been so ably expressed by our friend and
3644 comrade, G. H. Lockwood, that I cannot refrain from quoting from the "Billy Goat." It applies to West Virginia in the past and present. What shall the future be?

But this moving picture show is not the real thing—it is but a sham as it is all a sham—under the surface is the real purpose of it all, the protection, not of flag, country, or honor, but of the private property of the master class; the continuing of the system of exploitation that has reduced the working people to poverty and misery and made life one long-drawn-out agony.

Across my brain there comes a vision—no sham battle this! Here on the one hand are my brethern, the toilers in the mills, mines, factories and workshops, the producers of wealth. Their faces are pinched, their forms are bended with toil, their brains are dwarfed, they have had no chance, they have been beasts of burden. And with them are their wives and their children, who are also toilers, and whose forms are also bent and crippled, many without fingers on their hands and

many with legs and arms missing; all with misery and degradation stamped on their features, even to the babes in their mothers' arms. And I hear a cry, a hear cry; it is lo and agonized at first, but it keeps swelling and swelling until it becomes a mighty voice of protest. The worms have turned. The beasts of burden ask for justice. They ask for the right to possess what their own hands have created.

I see the masters in their beautiful mansions, built by the toilers' hands. I see them arrayed in fine linen and gold. I see them sitting at their tables loaded down with the choicest foods and wines; I see them corpulent, conceited, heartless, relentless and drunken with their own success, as they
3645 call it; I see their faces blanch—the voices of the toilers has penetrated their seclusion at last; I see them in hasty conference; I see their eyes flashing angrily, their lips curling, their hands working convulsively; I see them go to the 'phone and call for the 'Governor.' I hear the conversation—they demand protection—and they get it. I see again the boys of the moving picture show. This time they have forty rounds of ammunition in their belts, and no blank cartridges. The situation is critical. The command has been given, "Shoot to kill."

Do you want the rest of this vision? It is not necessary. You will see it all some day, but it will be no vision; it will be an awful, horrible reality—that is, you will unless you get sensible pretty soon and join the great peaceable army of revolt, that is standing for a change of the economis system from the competition and trust rule to the co-operative commonwealth. Call me "dreamer," will you—?

Bah! Your brains are ossified if this vision does not penetrate them.

Talk about "dreamers"—the people sleep; sleep on the brink of a volcano! Sleep while all hell is getting ready to break loose. Sleep, Sleep! They even snore and talk in their sleep, and they assure each other that 'all is well' in their sleep.

But all is not well; graft rules supreme; the power of greed sows to the wind; the storm clouds gather, and the handwriting is on the wall.

'Ill fares the land to hast'ning ills a prey,

Where wealth accumulates and men decay.'

Oh, ye members of the army of toil; Arouse! Arouse! before it is too late, and once again this old earth be
3646 bathed in seas of blood, your blood for it is every the blood of the workers that is offered upon the alter

of war. This applies to industrial wars as well—the kind of war that is now being waged in West Virginia. In the final analysis it will be hard for the master class of West Virginia to shift the responsibility.

This article is being prepared while enroute to West Virginia February 10. Next week we will have definite information of the situation as reported by the Associated Press the past week.

With all good wishes, I remain
Fraternally yours,
PAUL J. PAULSEN."

(From the United Mine Workers Journal, issue of January 2, 1913, page 1):

"Mother" Jones made a visit to Eskdale on Saturday, December 21, and held a large and enthusiastic meeting, and on the 22nd in the afternoon, at Holly Grove, gave the miners some good advise. It was interesting to note how these oppressed miners worship this venerable old fighter. They have confidence in her and believe that their cause is safe in her hands. They have been betrayed so often by the professed friends of labor that they hardly know whom to trust, but in "Mother" Jones they recognize the soul of loyalty and fidelity, a loyalty that has been tried on numberless industrial battlefields. We have never attended any meeting where such intense interest was shown. "Mother" Jones is in deadly earnest. She took them to task, for some of them have shown such intense fear of the [penetentiary.]"

3647 (United Mine Workers Journal February 27, 1913, page 1):

"Arrest of Mother Jones.

(By Eugene V. Debs)

The arrest of Mother Jones at the instance of the mine owners of West Virginia for inciting to riot and complicity in murder, as announced in the press dispatches, adds another plume to the crown of that lion-hearted old warrior of the labor movement.

The charge against Mother Jones, Paulsen and the rest of the organizers is as false as it is malicious and trumped up for no other purpose than to defeat the efforts they were making with such signal success recently to organize the coal

diggers who have for so many years been under the iron heel of the brutal boss.

The truth is that civil was has been raging in West Virginia during the past six months. The corporations not only control the state—they are the state. Their command is the supreme law. The Governor is their handy man. When the coal barons whistle the constitution is suspended and martial law prevails. The supreme lackeys on the bench promptly give their judicial sanction. The state militia is the private standing army of the labor-crushing corporations, and the soldiers move like jumping-jacks at their command. They also have a standing army of strike-breakers, called guards, consisting of seasoned thugs and high-grade assassins, and these mercenary hirelings have prodded pregnant women with their bayonets and knocked down little children with the butts of their guns in their brutal attempts to force the striking miners back into the black holes of West Virginia at wages insufficient to feed so many dogs.

3648 The newspapers and the churches are on the side of the corporations, else they would be driven out of the state. During the last few months Mother Jones has made her organizing headquarters at Charleston and directed the work from there. Vice President Frank Hayes of the United Mine Workers, Organizers Paulsen, Batley, Haggerty and others have been actively at work in the same field, and in spite of every obstacle thrown in their way by the bosses, they have succeeded in getting the miners lined up for action, and this is the reason Mother Jones and the organizers have been arrested and charged with murder.

The coal pirates of West Virginia are fighting desparately to prevent feudalism and peonage from being broken up in that state.

The day they had Mother Jones arrested they were caught red-handed buying up the Legislature like a drove of hogs. They have robbed the miners, debauched the courts, cashed in the legislature, established a military despotism to maintain their black holes of industrial slavery and brought eternal shame and disgrace upon the state.

The time has come to call a halt to these corporation slave drivers and all the resources at the command of the Socialist party and the labor movement should be put behind Mother Jones and the striking miners, and the fight pushed all along

the line until these black holes are unionized and the infamous rule of the robbers has been forever broken in West Virginia.

(United Mine Workers Journal March 13, 1913 page 1):

"Our Strike in West Virginia.

3649 Mother Jones, Editor Boswell and Others Refuse to Enter Plea to Charge of Inciting Riot.

Charleston, W. Va. March 8.

When Bonner Hill, sheriff of Hanawha county, bearing the processes from the circuit court against the military commission appointed to try "Mother" Jones and others, stepped from train No. 14 at Pratt Friday morning, he was met by a military guard which conducted him at once to Provost Marshal John Bond, who admonished Sheriff Hill to make no effort to serve the processes he had brought from the circuit court, and as a result he spent a fruitless day in the military zone.

Sheriff Hill was not the only passenger who alighted from the Chesapeake and Ohio train at Pratt Friday morning. There were a number of Charleston citizens and newspaper men who went to Pratt to see the military commission which had ignored the order of the Circuit Court of Kanawha county. Members of the commission claimed that the order had not been served and under the law could not be in the territory in which they were sitting, and when the hour came for the beginning of the trial of "Mother" Jones, Paul J. Paulse, Charles J. Batley, John W. Brown, and Charles H. Boswell, charged with conspiracy and inciting a riot, the commission announced its readiness to proceed.

John W. Brown, the Socialist leader, and Charles Boswell, the Socialist editor, asked permission to address the commission, and asserted that they had no plea to make or defense to offer.

"Mother" Jones also asked permission to make a statement, and declared:

Will Do It Again.

3650 'I have no plea to offer. Whatever I have done in West Virginia I have done over the entire country, and will do again when I get out.'

G. F. Parsons, asserting that he spoke for the 'bunch,' declared:

'We refuse to make any defense whatever.'

Charles Batley, while asserting that he had all the respect in the world for the court, had no defense to offer.

Paulsen attempted to make a statement, but when interrupted said it was immaterial."

34.

The court erred in sustaining the defendants' objection, and excluding the following offer of proof by the plaintiffs, in connection with the strike in Vancouver:

"Mr. Drinker: We offer from the United Mine Workers Journal of the year 1913-1914, the following articles relating to the strike in Vancouver. These are offered for the same purpose." (Which said articles so offered in evidence and excluded by the Court, are respectively in the words and figures following, to-wit:)

From the United Mine Workers Journal, issue of October 30, 1913, page 7:

Thirty Miners Sentenced.

Vancouver, B. C. Oct. 23.

Sentences ranging from two years imprisonment to three months imprisonment and $50.00 fine were pronounced today on more than thirty men, members of the Miners' 3651 Union of Nanaimo, B. C. and sympathizers found guilty of rioting in connection with recent labor disturbances at Ladysmith Extension South Wellington and Nanaimo.

The men are: Paul Deconininck, Suel Guthrie, John Morgan, William Simpson, Jr., and J. J. Taylor two years in the penitentiary to date from the time of their arrest, John Alsopp, J. H. Armstrong, Chas. Axelson, William Bauld, George Bombera, Sam Brightman, James Colley, Robert Cossar, Peter Galuska, H. H. Langdon, Duncan McKenzie, John McKenzie, Joseph Mairs, Jr., James Marshall Charles Mortimer, Steve Mrus, Steve Puyanch, George Porteray, William Stackhouse, Martin Slogar, Jas. Wallace, Robert Walkinshaw, and Charles Yoga, one years imprisonment with a fine of $100 and in default four months more to date from time of arrest, Henry Dyer, John Fisher, Earnest James, Alvar Kotila, Richard Morgan, Sr., William Patterson, William Sterling, John Scott, Henry Taylor, Richard Whisker, and Edward Williams, three months imprisonment and $50 in default of which two more months to date from time of arrest.

It seems to be the concensus of opinion that the penalties imposed are unwarranted by the offense, unprecedented in severity and are the height of judicial viciousness."

(From United Mine Workers Journal, January 8, 1914, Page 1)

Our Strike in British Columbia

Our Brothers are Standing Firm (By George Pettigrew)

Vancouver Island, Dec. 29.

The situation on the island remains unchanged in the various camps. In Cumberland the Chinese employed are
3652 practically the only men the company can depend on. The few whites they have are not satisfactory to them, this being proved by them working a few days and then leaving. In Nanaimo the company has made an attempt to scab the miners but are doing nothing. A convention of the district was held last week, when over forty delegates were in attendance. The situation was reported on from all the delegates, looking at it from its darkest and brightest sides, and also to devise some ways and means for a satisfacory settlement. At the conclusion many important resolutions were passed and it is hoped may have some effect on the strike. The delegates ended their deliberations convinced that the situation looked as good now as at any time during the strike and expressed their sorrow that our brothers on the other side had needed to send financial support for so long a time, but are firmly convinced that if the United Mine Workers stand behind them for a short time longer they will without doubt end the fight with an agreement equally as satisfactory as that signed up with the Vancouver Nanaimo Coal Company. There is at present more division among the coal companies than the men.

Less that 100 men have left the ranks of the union during the whole period of the strike, which to the rank and file of the members of the U. M. W. of A. should show the splendid fighting spirit of the men and women here.

The trials of the men in prison are progressing slowly and three weeks ago Ladysmith had 14 men tried by jury and ended in the acquital of three and conviction of 11 in unlawful assembly and riot. The South Wellington trials ended in 3 convictions and seven acquittals. Even tho these
3653 men have been found guilty they are being held without sentence. Two days ago application was made for bail for the few men who had laid so long without trial and ended in all but two getting out on bail from $5,000 to $10,-

000 with the exception of brother Aryelo and another, and the reason given for refusal was that they were American citizens, with their families on the other side. However, a statement was made that their trials would begin when the court opened after holidays.

When the readers of the Journal know our men have had to lie in prison for three, four and five months and then end in no conviction and that the coal companies can have the full support of the Government in having the camps filled with the scum of America in the form of special police and militia, some of these men having already been convicted of charges giving them six months imprisonment, and all the assistance they have cannot let them scab the miner successfully. We are convinced that the end is near and satisfactory at that.

(From United Mine Workers Journal, January 22, 1914, Page 3, Col. 2. Vancouver Strike.)

The failure of the coal operators on Vancouver Island to in any way treat with the United Mine Workers and their hostile attitude toward the establishment of the union there have led to a very serious industrial conflict in which all the mine workers on the island are involved, and which has required the expenditures of a vast sum of money.

To all intents and purposes the operators have been aided materially by the Government of the Dominion of Can-
3654 ada in their fight against the United Mine Workers.

The powerful interests there have resolved to prevent the establishment of our Union and have endeavored to operate their mines with non-union labor without success.

A number of our men were arrested and sentenced to long terms in prison without any recourse from these arbitrary tribunals. I am reliably informed by those in charge there that it is the worst form of persecution, with no semblance of justice whatever, but the men are remaining loyal to the organization.

International Board Member Farrington has had charge of the strike and has done everything in his power to bring about a conference, but at the time of compiling this report his efforts in this direction have been without results.

(United Mine Workers Journal March 26, 1914, page 1, Col. 6)

U. M. W. Organizer sentenced.

Vancouver, B. C. March 23.

Joseph Angelo, International Organizer for the United Mine Workers of America was sentenced today to four years imprisonment for his part in the Nanaimo coal strike riots of last August.

(From United Mine Workers Journal, April 9, 1914, Page 1, Col. 4)

Van Couver Island. Strikers Stand Firm tho Persecuted.

Victory in Sight.

The court cases arising from the so-called rioting during the third week of August last year, are now finished. At that time over 200 men were put in prison. The men were all remitted from the lower to the higher courts and in the 3655 earlier stages were advised to take a speedy rather than a jury trial. The first group of men to be tried were from Ladysmith and had been led to believe that some understanding existed between the crown and defense lawyers and were advised on this understanding to plead guilty, expecting the time they had served would serve as punish ment. However, on the day they came up for sentence, some got two years, some sixteen months and others eight months.

When this was found out the defense lawyers demanded a jury trial and again the men had to lie in prison awaiting all the red tape necessary for the change, bail in the meantime being denied. . They law for three months before getting bail, and then only thru the agitation going the country.

When the jury trials came, first they were tried in groups, thus allowing the defense lawyers more challenges as to jurors and giving a chance to select a fair minded jury. The first few cases tried in groups were acquitted on the ground that there was not sufficient evidence to convict. The crown lawyers then decided to change the method of trial and bring each individual before the court, this change gave the defense lawyers only four challenges as to the jurors. The result was that the crown always had a jury to be depended upon. In each case, after this method was adopted, a conviction was made and in the meantime the men found guilty had to lie without sentence.

The government evidently found the trials too long and expensive and two weeks ago made a proposition that if the remainder of the 52 men would plead guilty to a charge of unlawful assembly they would drop all other charges completely and give an understanding to recommend to the court
3656 leniency for the men awaiting sentence. The men were at first afraid of this, remembering what had happened in the beginning.

However, in the end they decided to adopt this course, and as a result over sevent were either allowed to go free or given suspended sentences. However, I am sorry to say that nine of our Nanaimo men got one year in jail two six months, and Brother Angelo from Bridgeport, Ohio, he is employed by the organization as national organizer, and who had done good work here among his own (Italian speaking) people, got a sentence of four years. It is well known to the men on the island, and they desire the men in the organization to know, that this sentence was not given for any property damaged but because he was a leader in the strike.

We here are not sorry all those cases are over, as it has been an anxious time for all the men concerned and their relatives, and during the trying period one young man from Ladysmith who got a one year term died in prison under painful circumstances, another is lying in the hospital in a dying condition, and more than one child has either been still born or had premature deaths from the strain of conditions and many more have been ruined for life.

The government of British Columbia have much to face in the future which they cannot bear, this when a spirit of fair-play and decency in the beginning could have prevented the strike and all its consequences. From appearances now it looks like as if the government is tired of more than the trial cases, they are also tired of the strike. The situation looks as good if not better than than it ever did and the determination of the men on the island, together with the many persecutions they have had and successfully borne have proved that the United Mine Workers have come to stay
3657 forever. The men here realize the splendid efforts their brothers on the American side have made to keep them in food during their struggle and are convinced they in return will show this same spirit when this fight is won, as "win" is the undoubted end of this struggle, and this struggle means the establishment of the organization on the Canadian side.

GEO. PETTIGREW."

35.

The court erred in sustaining the defendants' objection, and excluding the following offer of proof by the plaintiffs in connection with the Colorado strike:

"Mr. Drinker: I further offer from the United Mine Workers Journal the article in the issue of the Eleventh of September, 1913, page 1, by Vice President Hayes of the International Organization, for the purpose of showing that the Colorado strike in 1913 and 1914, was organized and conducted by the National organization in conspiracy with District 15 of Colorado, of the United Mine Workers, and the other districts of the United Mine Workers."

(Which said article, so offered in evidence and excluded, by the court, is in words and figures, as follows, to-wit:

"Colorado, Now.

(By Frank J. Hayes)

We are making splendid progress in Colorado. We feel confident a new star will be added to our banner before many more days. District 15, embracing the states of Colorado,

New Mexico and Utah is the only district west of the
3658 Mississippi river that is yet unorganized. It is commonly known as the 'West Virginia of the West', and the same despicable tactics are being employed here in keeping the men in subjection that were used in that state. Armed guards, and the so-called detectives are very much in evidence, and many are the outrages they have committed in their futile efforts to keep out our union.

Despite all their efforts, however, out movement grows stronger each day. The miners of northern Colorado, who have been on strike for more than forty-one months, are still standing loyally by the organization and are more determined than ever to defeat the efforts of the operators to make this a non-union state. Our campaign in southern Colorado, where about three fourths of the coal miners of this state are located, will have a decided influence on the strike in the north, and I believe, will mean the complete organization of every mine in the state and the establishment of a wage agreement with our union.

Our success in southern Colorado also means the unionization of all the mines in Utah and New Mexico. This is why our campaign to unionize southern Colorado is of such vital importance at this time. We have established branch offices

of our union at Trinidad, Walsenberg, Florence, Aguilar and Raton, each of these places being the center of large coal fields, and due to this division of our field forces we are able to reach all the men in the district on short notice. I have been trying for almost two months to get the operators of this district to meet us in joint conference for the purpose of discussing and adjusting all points at issue. They have not as yet replied to our invitation to meet us in conference, either being unwilling or afraid to make their position
3659 known at this time, and as a result of their dilatory tactics they are being judged rather harshly by the public, which, in the finality, will wield a tremendous influence on this situation. We have proceeded with our campaign here slowly, but surely, diligently and systematically, until today we have the situation so well in hand that we feel we can strike this entire district, if necesary, on twenty-four hours' notice. We are at this time sending out another invitation to the operators asking them to meet with us in joint convention at Trinidad, Colo., next Monday, Sept. 15, and in the event of their failure to attend this convention, it is very probable that the miners' delagates there assembled will frame their demands and send out a strike order to all the miners in the District. I feel sure I express the sentiment of every miner in the West, when I say 'Colorado, now or never.'"

36.

The court erred in sustaining the defendants' objections, and excluding the following offer of proof by the plaintiffs, in connection with the Colorado strike:

"Mr. Drinker: I offer the following articles, one by one, from the United Mine Workers Journal, during the years 1913 and 1914. x x

Relating to the strike conducted in Colorado during that period, for all the purposes specified in connection with the offer of the Journal articles in connection with the West Virginia strike, to go in as if I said it all over again. x x x x x x

I offer these articles for all the purposes specified in connection with the offer of the Journal articles in connection with the West Virginia strike, and for the following
3660 additional purposes: To show that the strike conducted in Colorado during that period was in conspiracy of the purpose to protect districts 21, 14 and 25, and the union operators located in such districts from the competition of the non-union or open shop coal mined by Colorado op-

erators at a cost lower than that mined by the union operators in the south; and for the purpose of showing that the Colorado campaign in question, as described in those articles, was part of the general conspiracy referred to; further, to show that in connection with the conduct of the strike in Colorado, the methods they used were so familiar on their face as to show that they were part of a common design, with the conduct of the strike in Arkansas, including such matters as the wearing of handkerchiefs around the arms of the strikers, and so forth.

(Which said articles, so offered in evidence and excluded by the court, are respectively in the words and figures as follows, to-wit:)

(From the United Mine Workers Journal, issue of January 25, 1912, page 1, column 1):

"Tellers' Report

Indianapolis, Ind. Jan. 18, 1912.

—Delegates to American Federation of Labor—
Adolph Germer 33215"

(From the United Mine Workers Journal, issue of September 11, 1913, page 1):

"The Colorado Miners Are Satisfied Now (?)

(By Adolph Germer.)

Walserberg, Colo. Sept. 4.

3661 A call, signed by International Vice-President Hayes, International Executive Board Member Lawson, President McLennan of District 12 and Secretary-Treasurer Doyle of District 15, has been sent to every operator in the state asking them to participate in a joint meeting. We want a settlement of the miners' grievances without a strike. Whether the operators want a settlement without a strike remains to be seen. If they do not and a strike results, which will be the case if they continue their arbitrary attitude, the responsibility for all that follows will rest with them. We have delayed and postponed independent action in the constant hope that they might yet come to their senses and meet with us as the mine owners do in other states. We have about reached a place where decisive action must and will be taken. The Colorado miners are anxious to respond to the call to action. The opportunity to gain a signal victory was never better. The agents of the operators tell the miners that

we are only bluffing; that we have no intention of calling them on strike and support them in a fight; that our only reason for calling those meetings is to excite them and get their money.

The foolish fools that these intelligent agents of the mine owners are. Has West Virginia been no lesson to them?

They shall see that we mean business and that we will prove true to the trust the miners repose in us."

(From the United Mine Workers Journal, issue of November 6, 1913 page 1 and 2):

"Latest News

(Special to the Journal)

Denver, Colo. Nov. 3.

3662 Denver business men today, under auspices of the Commercial Club demanded Governor Ammons to take immediate steps toward early resumption of mining coal. Coal in Denver is sold at $7.50 a ton. All the factories are paralyzed, and there is much suffering among the poor people.

The operators attempt importation of strike breakers by hiring them for the Pueblo steel plant, and then taking them to the mines. A gang of them was escorted by guards to Walsnburgh, and was met by a crowd of strikers. A battle ensued and several strikers were wounded. Governor Ammons states that the importation is contrary to his orders and that the militia must prevent it.

At a monster meeting held in Canon City public sentiment is pronounced in favor of the miners. Public meetings are being held all over the state, demanding prompt settlement.

Strikers and soldiers played ball at Ludlow Sunday.

ED WALLACE."

(From the United Mine Workers Journal, issue of November 13, 1913, pages 1 and 4:)

"Our Strike in Colorado

The Latest News.

Trinidad, Colo. Nov. 10.

Four guards were killed in a battle outside of Laveta. A drunken top boss incited trouble, then called guards to rescue him. Five armed guards in an automobile menaced

miners with Winchesters outside of town and engaged in battle with five strikers. Four killed. Top boss wounded. Strikers unhurt.

3663 Vice-President Hayes addressed monster crowds at Boulder and Trinidad. The audiences were composed mostly of business men, farmers and outside workers, who are very sympathetic with the miners' cause.

Guards joint militia in committing many depredations. They search miners' houses and tents, ostensibly for weapons, steal money and watches. Suspected, they joined the militia with intent to create friction between soldiers and strikers. Governor and General Chase notified.

ED WALLACE."

"The number of rifles that miners were in possession of and have hidden out since the coming of the militia is frov-ing constantly like far 'Sir John Falstaff's men in buckram,' and probably for the same reason".

(From the United Mine Workers Journal, issue of December 4, 1913, page 4:)

"Militarism Rampant

As usual, the promises made by those responsible for sending the militia into the strike field of southern Colorado were insincere, were never intended to be redeemed.

The miners, though doubtful of the promises of the officers to give a square deal to all, realized that it would be difficult for the military to act any worse than the sheriffs of the two counties, who had practically surrendered their offices to the important gunman of the operators.

But not for long were we allowed to deceive ourselves with hope of fair treatment from the soldiers of the state.

3664 Possibly many of the rank and file were in sympathy with the striking miners, but the officers, especially the officer in command, General Chase, were not long in showing beyond doubt that they considered it the duty of the militia to force the miners to return to their slavery in the mines, without the protection of a union for which they were contending.

General Chase served under Sherman Bell during the Peabody regime, and soon indicated the fact that he was capable not only of duplicating the tyrannous actions of that infamous blackguard, but could be induced to go further than Bell ever dared go, in his anxiety to serve the interests.

The good will that was evident between the miners and privates of the militia did not fit in with his plans and coercion. To destroy that he began to enlist the companies' hired thugs, and with these in the ranks, the conduct of the militia soon ended that era of good feeling.

Ostensibly hunting for arms, they ransacked the houses of the strikers, stealing money and any portable valuables they could lay hands upon.

The killing of G. W. Belcher, one of the guards who had made him self hated by his career of murder in many states, gave him the excuse he had been anticipating, to place the military above the civil authorities.

By whose order this man was taken off we do not know. The man Zancanelli, who is alleged to have confessed, has been kept 'incommunicade'. No one has been allowed to speak to him except one Broughton, another relic of the Peabody regime; a known creature of the operators who
3665 has set himself up as prosecutor and persecutor. Part of his, Zancanelli's alleged confession is disproven by the unsolicited testimony of newspaper correspondent, who was at union headquarters and in communication with accused union officials at the time the plot was alleged to be made.

The military court in West Virginia has met with such universal condemnation from every source, it was never anticipated any one would ever again attempt to establish one while civil courts were accessible and able to perform their functions.

The actions of General Chase can only be explained by the charges made by many, even before he was sent into the strike field, that the boasted five millions of dollars the operators said they would use to defeat the objects of the strike were in part at his disposition; would be used to hold up his hands while he robbed the citizens of the state of their every constitutional right; set the rule of force above the rule of right.

As we have said in previous, illegal force must be opposed. We appeal to the government of the United States for redress; for justice.

And if it be refused there we must appeal to the only tribunal that is left to us.

We will not give up the rights our fathers fought for at the behest of any prostituted official, civil or military.

On the heads of those who force this issue on people who would prefer peace be the results of their tyrannical, illegal acts."

(From the United Mine Workers Journal, issue of January 8, 1914 page 4):

3666 "Law and Order

The citizens' alliance has made its appearance under the name of the Routt County Taxpayers' League. A mob of citizens in Steamboat Springs, Colo., entered a court room where striking coal miners were having a hearing and stopped it. The sheriff was forcibly taken from the court room and Frank Garier, J. L. Ferguson and John Steinhart were notified that they had twenty-four hours to leave the county. They then went to the jail, made the jailer open the door and released four men who were awaiting the outcome of the hearing.

To complete the farce which has resulted in the sending of troops to Routt County, the citizens' alliance declared that they would go to Oak Creek and force the 300 striking coal miners to leave the county. This gave Governor Ammons his long-wanted excuse to call out the State militia to protect his own large interests in that county and those of the coal operators. It is said that the militia has been sent there to disarm the miners and deport them, but that will not be known until the soldiers are in the field. In the mean time the union has ordered all men to stand for their rights as American citizens and to shoot to kill if anyone other than a regular peace officer molests them."

(From the United Mine Workers Journal, issue of January 22, 1914, page 6):

"From Colorado.

Will Fight to the Death.

Florence, Colo. Jan. 16.

The mass meeting of the Fremont county miners, held at Rockvale, Colo., January 15, was one of the largest
3667 meetings that has been held in the county for some time and shows that the boys are going to fight to a finish. We had a large parade led by the Coal Creek and Rockvale bands. There were between 12 and 15 hundred men in the meeting which showed that there will be no compromise as some self-styled committee of men in Fremont County would try and make people believe, as the miners of

Fremont County will not go back to work unless we get full recognition of the union, and, if necessary, we will sell our lives dearly to win this great battle and will never go back until we get full justice. Everything is going along fine and the men are in the best of spirits.

There is no production of coal to amount to anything in this county and the scabs that they are getting in can't produce the goods.

There are two guards to every scab and the companies cannot stand that long. We all feel grateful to our brothers in the East for the way they are coming to our relief.

THOS. SCOTT, Vice-Pres., Dist. 15."

(From the United Mine Workers Journal, issue of April 2, 1914, page 3):

"Will the Guilt Lie There?

(By Adolph Germer.)

Mother Jones is perfectly right and entitled to the highest praise and admiration for defying the sheep raiser who occupies Colorado's executive chair, and General Chase. Ever since the militia came into the strike field they have defied all law under the orders of Chase with the connivance of Ammons. Has Mother Jones not as much and more right to defy Ammons and Chase as they have to defy the legal
3668 guarantees of state and nation? Who are Ammons and Chase that they can defy state and nation and no one can defy them?

That Ammons and Chase in their fiendish desire to pliantly serve the Standard Oil interests have surpassed all bounds of reason has at various times been confidentially admitted by military officers in service in Colorado. Many acts that those officers perform under orders from Ammons through Chase or from Chase with the approval of Ammons are most distasteful to them. But they are soldiers and obey.

The Pueblo Chieftain, the leading slimy mouthpiece of lawlessness, on March 19 in an editorial says: 'If bloodshed results from Mary Jones going back to Trinidad the guilty ones will be those who are advising her to defy the State of Colorado.' Will they be the guilty ones? Are Ammons and Chase the State of Colorado? If so, since when? Has Colorado's citizenship so disintegrated that nothing is left of the state except Ammons and Chase? Colorado's populace is deserving the utmost pity if it has been so sapped of its being

that nothing is left but a specimen of humanity that can offer no logical reason for its existence and a bundle of singular egotism wrapped up in a uniform.

Let the people of Colorado decide by vote whether or not Mother Jones shall be permitted to go back into the strike region. If the people of Colorado were to determine that question Ammons and Chase would be 'snowed under' so deep that the infernal regions would not be able to thaw them out.

The Chieftain would have Mother Jones renounce her womanhood and bon in cringing sycophancy to the despotism of Ninny Ammons and Czar Chase.

3669 Lieutenant Linderfeld on one of his rampages became so intoxicated that he, like a madman, shrieked, 'I am Jesus Christ.' What a wonderful combination! Ammons and Chase are the state, while Linderfeld is Jesus Christ. Whatever they may or may not be, one thing is certain, they have demonstrated their utter unfitness to be entrusted with the distinies of the people and clothing them with power gravely endangers the much-boasted liberties of the state and nation.

No, if blood is shed, because of the return of Mother Jones to the strike zone the guilt will not be with those who advised her to return, but on the contrary, it will rest with Ammons and Chase and the kept, lying press of the moneyed interests which the Chieftain may justly boast of heading.

Had Ammons shown some backbone in the early stages of the strike and had he not exhibited a 'yellow streak' when the test to be a man was put to him, Colorado would not be paying $5000 per day to ruffians in uniform to perform the most criminal acts in the interests of the coal barons.

The blood that has been shed, and that the Chieftain predicts that will be shed, will forever besmirch Ammons and Chase and those they serve. They are evidently ashamed of their work and in their desperation are trying to fix the public's attention on those who are gallantly battling for their legal and inherent rights. They figure that if they can fix the attention upon the strikers, their own miserable and contemptible acts will escape detection.

Every crime that is being committed by those who claim to be the state will raise the veil of obscurity from the
3670 vision of the working class and soon they will avenge the grievous wrongs they are now suffering. Soon the working class will march to the ballot box and snatch from plutocracy that power which has always been used to enthrone wrong and crucify the right.

The unrest is spreading throughout this nation and abroad. The tyranny exercised by the money-mad of the world is arousing labor from its slumber, and the day is not far distant when the citadels of oppression and the oppressors will fall and right will make right.

Mt. Olive, Ill. March 28, 1914."

(From the United Mine Workers Journal, issue of April 30, 1914, page 2):

"Fighting Continues with Assault Made on Chandler.

Seven Persons said to Have Been Killed.

Denver, Colo. April 26.

After an all day battle, between union and non union coal miners, the town of Chandler was captured tonight, by 1,100 strikers, according to messages reaching the governor's office.

Seven men, including four mine guards, were said to have been killed in the battle. The casualties in the strikers' ranks are unknown.

Canon City is terrorized lest the combatants carry the fight into that town, which is only a few miles from the mine.

An appeal to the governor for help from the sheriff of Fremont County, resulted in orders being issued tonight to General Chase to proceed to Canon City with 200 militia to take protective measures and endeavor to bring about a truce.

3671 At Trinidad tonight 102 armed deputy sheriffs with a Gatlin gun are entranched in the court house. This precaution was taken because it was understood that Judge Musser, of the Colorado Supreme Court, and others of a committee appointed by the governor to investigate conditions were about to arrive.

Truce to Be Brief.

The truce lasts only until these men get there from Denver and announce what they will try to accomplish. Should this

be unsatisfactory, it is said nothing can prevent an immediate battle.

General Chase, in charge of the troops, this afternoon again turned back members of the Red Cross society, who are trying to get into Ludlow from Trinidad. He declared he would let no person go into Ludlow unless the governor gave him direct orders to do so.

A crowd of 5000 men and women stood in a pouring rain on the lawn in front of the capitol this afternoon and heard the state administration denounced for 'permitting murders in the southern coal district.'

'Mother' Mary Jones, direct from Washington, created a sensation when she appeared up to then unannounced.

Just before the arrival of 'Mother' Jones a resolution deleging that within the last 20 years 2000 miners died because 'dividends could not be lessened by the expense of improvements'; that the state, county and municipal officials had been purchased and election machinery seized, desperadoes hired and militia used as a constant threat.

Lives Are Pledged.

The resolutions pledged the lives and liberty of the audience to the relief of 12,000 men, speaking thirty-six
3672 tongues. The strike districts which were in revolt demanded the withdrawal of troops; the seizure of mines by the state pending agreement by the strikers and operators; the canceling of leases of 13,000 acres school lands and the development of the state's local land acreage; a constitutional amendment, repealing the Moyer decision; denounced Governor Ammons and Lieutenant Governor Fitzgeralld as traitors to the people.

At the conclusion of the speech making the meeting adopted resolutions, condemning Governor Ammons as an accessory to the murder of babies and demanding his impeachment.

The cigarmakers' union of Denver voted money to send 500 armed men to Trinidad and Ludlow tomorrow. These men will start at daybreak.

The Denver Federation of Labor this afternoon adopted a resolution to be presented to the national organization, asking that each of the 2,000,000 union laborers in the United States

be assessed 5 cents a month to provide money and arms for the strikers."

"Strikers Succor Enemies Wounded and Non-Combatants.

All Day Battle Rages in Mining Field

Many Miners Destroyed by Avengers.

Trinidad, April 24.

Twenty Face Death in Mine.

J. W. Siple, Denver, president of the Southwestern Fuel Company and twenty of his men are facing death tonight in the Empire mine as the result of their refusal to surrender to the strikers at Aguilar early this afternoon.

Three women, two children and two wounded men have been removed from the mine pit, preparatory to the resumption of the fighting.

A supply of air sufficient to last the capties about
3673 twelve hours remains in the mine, it is said. Unless aid reaches them by that time they will face the alternative of dying by suffocation or throwing themselves on the strikers' mercy.

Those who have been taken from the pit are William Waddell, mine superintendent, shot through the shoulder, his wife and Louis Waddell, their 13 year old son; Mathew Waddell, mine clerk, and also Waddel's son, shot through the foot; the younger Waddell's wife and their 9 months-old daughter, and Mrs. John McIntyre, wife of the camp blacksmith.

J. W. Church, the mine's chief engineer, reported to have been killed in yesterday's fighting, is within the mine and safe. The only condition imposed by the strikers was that the men should surrender their arms and accept safe conduct from the district.

The wounded men, women and children who accepted it were conducted to a place outside the danger zone, and, if possible, will be placed on a train for Pueblo this morning.

At the Southwestern mine, which broke into flames early this afternoon, a battle is raging between guards and a strong force of strikers. The tipple and the camp have been destroyed, according to a report which reached here tonight, and the guards have been forced back into the mouth of the slope.

Firing All Along Canon.

The firing is spreading rapidly all along Green canon, in which both the Empire and the Southwestern mines are located.

Virtually the whole strike zone is in a state of terror. Should the troops fail in running the eighteenth mile gauntlet spread for their reception, more damage may be done
3674 to property. Should the militia succeed, it is possible that the guerilla warfare will exist for weeks.

John Lawson, International Board Member of the United Mine Workers of America, announced definitely this afternoon that he would refuse to order the strikers to surrender their arms until they had been assured that they would receive fair treatment at the militia's hands, 'There can be no peace without justice,' he said.

Communication into the war district from Trinidad has been completely interrupted, and grave fears for persons on the mine company properties are entertained.

Enormous Loss is Feared.

The mines now known to be ablaze are the Primrose, of the Colorado Fuel and Iron Company; Mine No. 4 of the Southwestern Fuel Company; the Green Canon mine of the National Fuel Company, and the Rugby mine of the Colorado Fuel and Iron Company.

In addition to the Royal and Broadhead mines, both operated by independent companies are in ashes.

Major Hamrock, at the Ludlow camp, announced late tonight that he was seriously contemplating the sending of at least a substantial proportion of his force in the direction of Aguilar, so serious did he consider the situation there.

Aguilar is Fight Center.

The storm center of the trouble virtually shifted today to Aguilar, and the liberation of the three women and five children from the pit of the Empire mine marked the first cessation in the fighting in more than twenty eight hours. According to the reports of the trouble which have reached Trinidad, the shooting commenced at about 9 o'clock
3675 yesterday morning, when the strikers began to pour shots into the camp from the surrounding hills.

In anticipation of trouble, the women and children, under the direction of President Siple and the other mine officers,

had been removed to the tipple, about which the fight immediately centered.

Fire in the houses of the camp broke out almost immediately and, fanned by a light breeze, spread rapidly. The firing meanwhile redoubled and the shots ripped through the tipple house until it soon became untenable. The women are crowding in the slope, the entrance which Siple and his companions attempted to hold.

Three Strikers Killed.

In the fighting before the entrance of the drift, three strikers, J. P. Gomez, Ben Vigil, and Nick Schumich, were killed and a mine guard either killed or wounded.

The force of strikers about the entrance to the mind grew rapidly in number, but it was the spread of the flames to the tipple house which finally drove its defenders to abandon it and retreat further into the mine. A few moments later the strikers, according to R. D. King, one of the mine owners, who witnessed the engagement from his residence, a quarter of a mile away, effectively closed the entrance with dynamite. Shortly thereafter the wrecking of the fan cut off the circulation of air through the workings and the air shaft was blocked.

Communication Cut Off.

The flames, which spread through the camp until every building was ablaze, cut off communication with the entombed persons until shortly afternoon.

3676 It was then that E. N. Snyder, one of the Aguilar strike leaders, announced over the telephone to Trinidad that an effort to reach Siple and his companion for the purpose of liberating them from their hazardous position, provided they would surrender their arms, was to be made.

Snyder said tonight that Siple had refused the proposal of surrender, though he had intimated that he might change his mind. Snyder also said that personally he 'didn't care what he did'. 'The only quarter asked by Siple'', he declared, 'was protection for the women and children'.

According to reports which have been received from the younger Waddell, he received his wound when he ventured from the mine slope, in which his father and the others were imprisoned, to recover a bank book which had been abandoned in his house.

While he was in the house the place was surrounded by strikers and he was taken prisoner. On his way to a boiler house, where he was to be detained, he was shot in the feet. His captors declared the affair was an accident. The elder Waddell received the bullett in the shoulder in attempting to go to his son's asistanve. He succeeded in crawling back to the mouth of the slope, into which he was drawn. None of those in the custody by the strikers complained last night of the treatment they had received.

The fighting this morning began shortly after 5 o'clock, when from the Empire property and the town of Aguilar the strikers' forces surged northward, carrying everything before them. Their numerical strength at various places was estimated at between 700 and 1,200 men. For the most
3677 part little or no resistance was offered.

Primrose Property Fired.

The Primrose property, from which the women and children had been removed to Rouse during the night, was the first to be consigned to the flames. Before valleys from the hills its defenders fell back, from building to building, until finally they were forced to flee to the hills.

A moment later the mine tipple and other wooden structures were ablaze and at 9 o'clock reports of dynamite heard at Rouse gave evidence that the slope and probably the air shaft had been destroyed.

Strikers surged over the ridges next in the direction of Rugby, which was evacuated by the few men who remained with the buildings without a struggle. Shortly thereafter, according to report, it also burst into flames.

Strikers Read for Attack.

The strikers then marched on Rouse, which is still unattacked, according to the best information obtainable. The last message sent out by its superintendent before communication was cut off was directed to the Colorado Fuel and Iron Company's offices here.

'For God's sake, send help,' it read. Since Rouse forms the key to the mines at Lester, Cameron and Walsen, it is feared that a determined effort to take it may be made.

At Cameron, as a precautionary measure, women and children have been placed in a concrete cellar, and similar steps have been taken to insure their protection at the other menaced points.

The last of the camps to report fear of attack were Primere and Segundo, operated by the Colorado Fuel and Iron
3678 Company. All the women from the strikers' Segundo tent colony have been removed, according to the superintendent's report, and a large party of armed men is visible on the hills. Neither of the camps could withstand a determined assault. Similar forces of men are visible on the heights above Berwind and Tabasco in the immediate vicinity of Ludlow, but no fear for their safety is entertained in view of the proximity of the milita men who occupy the Ludlow depot.

The Black Hills, held by the strikers, and Cedar Hill, on which the Militia's machine guns are mounted, exchanged shots yesterday at long range, but no close fighting occurred. So far as it known no one was hurt.

Families Rushed to Trinidad.

The women and children in the vicinity of Segundo have nearly all left. The strikers' families have been brought to Trinidad, and the families of the railroad workers at that place have been taken to Weston.

Trinidad is crowded tonight with hundreds who have come in the camps. The crowds were orderly. Extra police were stationed at the morgue and at the hall where the bodies of Ludlow victims lie in state.

Funerals of Premo Larsie, Frank Robins and William Fyler were held yesterday. The bodies were accompanied to the grave by long processions.

A general funeral will take place today over the remains of sixteen of those who lost their lives at Ludlow. Separate services will be held for Louis Tikas, leader of the Greek colony at Ludlow, who was killed by militiamen near the close of the day's fighting.

An Italian fraternal order has contributed $600 for the
3679 relief of Ludlow victims."

"Mothers and Babies Slain in Safety Pitts.

Tents Are Fired and Victims Perish from Smoke While Men, Trying to Rescue Their Families, Are Killed by Machine Guns and Rifles; Renewal of Battle Expected.

(By Harvey V. Duell.)

(Staff Correspondent of the Rocky Mountain News).

Trinidad, Colo. April 21.

Thirty-three dead, more than two-thirds of them women and children; a score missing and more than a score wounded,

is the toll known tonight to have been taken by the fourteen hour battle which raged Monday and last night with uninterrupted fury between State troops and striking coal miners coal miners in the Ludlow district. The death list is growing hourly.

With arms ready, both sides now await the coming of dawn, when, it is forecast the battle will be resumed with greater bloodshed than that which has occurred. The militia, which yesterday drove the strikers from their tent colony, and it is charged, fired it, involving thereby the greatest loss of life, is preparing for a machine gun sortie at day break from their position along the Colorado Southern railroad tracks at each side of the Ludlow station.

On the surrounding hills, sheltered by rocks and boulders, 400 strikers, await their coming, while their ranks are being swelled by grim-faced men who tramped over land in the dark, carrying guns and ammunition from the neighboring union camps. Italian, Green and Austrian miners have appealed to their consular representatives for protection and John McLennan, president of the local union district,
3680 today wired the Red Cross in Denver to be prepared to render aid.

On the outcome of the engagement tomorrow may depend the fate of the strike. Both sides face it as a battle of death, with no thought of quarter asked or received. At a last hour it was said here the battle could be averted only by the arrival of reinforcements from Denver.

No train service through the war zone is permitted. The telephone communication has been re-established. Major Hamrock is in command of the troops, hemmed in on all sides by the striker lines, which extend back three miles. Through this cordon only the dead wagon is allowed to pass."

(From the United Mine Workers Journal, issue of April 30, 1914, page 8):

"Colorado or Mexico?

By Adolph Germer.

Mt. Olive, Ill. April 27.

Where in darkest Russia have there been such horrifying crimes committted in the interest of capitalizm and where has militarism run so mad as in the strike region of Colorado? Where on earth has the brutality of capitalism so fully unmasked itself as when the helpless women and innocent chil-

dren of the strikers were unmercifully shot and burned to death by professional murderers, clad in a military uniform?

Governor Ammons, General Chase, John D. Rockerfeller, Jr., Major Hamrock, Lieutenant Linderfelt, Sheriffs Farr and Grisham, Jesse Northcutt and several others are the chief actors in the carnival of crime that will forever have a stigma on Colorado. They are responsible for the murders that have grown out of the strike. Had they done their duty;
3681 had they done one-half as much to enforce the law as they did to violate it, the strike would have ended in its infancy or perhaps been entirely averted.

All hail to the miners for the noble defense they made against the paid assassins. And all hail to the Printers' Union of Denver for sending $500 to the United Mine Workers of America with which to buy guns. Now I would that every other union that has funds would follow this splendid example.

I spent more than a year among the Colorado miners. They are men of all nationalities but they have only one purpose, and that is—the establishment of at least a degree of justice in that state. In this effort they deserve the fullest support of every person who has a human heart. These strikers are not fighting against 'duly constituted authorities.' They are fighting against usurped power and prostituted authority. In that fight I cheer them on and wich that circumstances might warrant my being with them again. Were it within my power I should without hesitation recruit an army of several thousand men, with fearless hearts and keen eye, each one equipped with the best rifle that can be had and plenty of ammunition, and I would enjoy marching this army against Ammons, Chase and Linderfelt and drive these inhuman monsters to Hell, where they properly belong. If by some magic stroke I could this very moment put five thousand well provided men into Colorado I would do it without equivocation, and I should finish what the brutes in uniform and high places have started.

I am not an advocate of violence, and have not lost faith in the power of the ballot, providing the enemy fights
3682 with the ballot. But when the enemy places guns in the hands of paid assassins, to wantonly slaughter the innocent, more than a ballot is needed to rebuke the crime. If it means death, we had better die fighting for the right than be shot down and burned to death without resentment. Let the slogan be, 'An eye for an eye, and a tooth for a tooth'.

Why go to Mexico when we have a Mexico within the confines of these United States? Why not first Americanize Colorado? Why not make Governor Ammons, General Chase and Lieutenant Linderfelt, who claims to be 'Jesus Christ', salute the flag? Why not enlist in an army to defend the 'National honor' at home? The stars and stripes were shot into and burned down as well as the women and children.

What patriot, bubbling over with a desire to defend the 'national honor' in Mexico, has shown an eagerness to defend the 'national Honor' at home?

Why not first Americanize Colorado? It is also a land of Rockefeller. Let the good work begin at home."

(From the United Mine Workers Journal, issue of May 7, 1914, page 3, three articles):

Chase Refuses Truce Nine Militia Killed.

Walsenburg, April 29.

Nine militia gunmen were killed today by strikers after General Chase had refused to agree to a truce offered by leaders of the strikers.

Leaders Peter Quinn and E. M. Snyder, in charge of
3683 the Walsenburg district strikers, offered this morning to observe a truce until the United States troops came if the gunmen militia would return to their tents. The militia commander communicated with Governor Ammons and Ammons with General Chase about the allowing of a truce. Chase and Ammons, anxious to do everything they could for the operators before their gunmen-militia should be disposed by the regulars, refused and the gunmen-militia tried to take the hogback, the strikers' position, nine of the gunmen falling. Firing is heavy this afternoon.

Every mine in the Walsenburg district, with the exception of the Walsen mine, the strongest fortified in the state, are in the hands of the strikers following thirty hours of fighting after Jeff Farr and his gang of gunmen attached the strikers.

One hundred and fifty gunmen-militia were brought here from Ludlow last night and General Chase instructed them to disarm the strikers and let the gunmen retain their arms, which the strikers refused to allow.

Henry Ford was killed by the gunmen-militia when he left the McNally mine on his motorcycle with a girl on the rear seat. The gunmen, following their plan of fighting men,

women and children alike, turned a machine gun on him, killing him."

"Revolution Imminent Says Mother Jones.

'The working people of America have stood all they can bear.'

It was Mother Jones speaking with a conviction so apparent that it startled.

'What does all this strife and turmoil growing out of the coal strike and the Ludlow massacre mean?' This was asked this 82-year old, white-haired, ruddy-faced, forceful
3684 woman, who lay in Governor Ammon's bullpens in southern Colorado for three months in an effort to arouse the voting women of the state to protest.

It means that the workers would rather die fighting to protect their women and children than to die in deathtrap mines producing more wealth for Rockefeller to use in crushing their children,' she added.

'It means that the whole nation is on the verge of a revolution.' "

"12 Die Before U. S. Brought Peace.

Walsenburg, Colo. May 1.

Peace again reigned here and the 160 strikers who made it so hot for the militia in a three day battle that General Chase sued for a truce over the 'phone from Denver have refurned to the homes, taking their guns with them.

The total dead in the fighting was ten gunmen, one militiamen and one striker, who was shot by his friends when he lost the identifying white hadkerchief they all wore on their arms."

(From the United Mine Workers Journal, issue of May 14, 1914, page 3):

"Spirit of Revolt

(By Michael Halapy.)

'You knock a man into the ditch, and then you tell him to remain content in the position in which Providence has placed him'—Ruskin.

3685 It is but natural that the man in the ditch should revolt, especially if he has been knocked there by some external force designed to divest him of personal liberty and well-being. Any effort to keep him there meets with

violent resistance. It is his constant vision to perfect himself and his surroundings. Everyone has an ideal. Some recognize it now, and pursue it blindly. But those who know their ideal as if it was already an actuality are methodical in its pursuit, and uncompromising with forces militating against its attainment.

The man in the ditch has an ideal. He might be humble in appearance, but he is majestic in the spirit. The impulses that he feels are the motive force of the world. Discontent fills his soul and he wants to climb out of the ditch. Laudable is his effort, for it is the chief cause of all achievement, of all progress.

To tell the man in the ditch to be content is to insult him. To say that his being there is the act of Providence is an attempt to charge up to Omnipotency the human cruelties and barbarities. Indeed, if it were the decree of Providence that human beings with souls and aspirations should live in ditches of poverty and degradation, then any attempt on their part to throw off those degrading influences would be a rebellion against God. For rebellion it is. But it is a rebellion against human injustice.

Today all over the world the man in the ditch is in rebellion against the forces striving to hold him there. He is a rebel at heart. He can not help it. Conditions made him such. He was born to cherish and love all those conditions which blend with his idea of justice and mercy; and his deposition is to be peaceable and rather tolerant. But
3686 great wrongs cannot be tolerated. And of all the wrongs that which keeps an industrious man in the ditch is the greatest, for it does not only restrict the moral and material advancement of the man itself, but it also retards the progress of the world.

It should not be necessary for man to fight for the fruits of his labor. Industry should bring its own reward; and the man in the ditch should be permitted to rise, to elevate to the full brilliancy of his manhood. But he has to fight to get out. Were it only to climb out the effort would be easy and the world would make more progress in one generation than it has in a thousand years.

To the man in the ditch mankind owes an infinite debt; and it should emblazon him with all the honors of a brave warrior who has fought a constant battle for human progress and civilization.

But for all his sacrifice and achievement this ditch man is held in wholesome contempt by tyrants who oppose his laudable ambition to rise with the rest of mankind; and with a club, with a rifle, and with a machine gun, they endeavor to knock him back into the ditch. But as through all the ages, so now, flows in the mail of truth, the man in the ditch boldly meets and fights his foe. He fights for freedom. He sacrifices his life; his dear ones; his all for freedom. For real happiness can only be had in freedom. And has it not been aptly said, 'Give me freedom or give me death?'

And so it is with the striking miners in Colorado. They fight for industrial freedom—freedom to work out their own destiny, and slaves cannot do this. The Rockefellers knocked them into the ditch, but they refused to stay there while they took the fruits of their labor. They tried peaceably to get out, but the tyrants would listen to no progress on their part, while they are aggrandizing the the whole
3687 world. At this stage it would be well for the oppressors of the poor to remember that tyrants are becoming more and more hateful in the estimation of civilized people; and tyrants especially who are responsible for the massacre of innocent women and children will certainly not be tolerated.

Let us delight in the spirit of revolt so sublimely manifested by the Colorado miners. Theirs was genuine chivalry when they took up arms to avenge the cruel, merciless murder of their wives, mothers, and children at Ludlow. Submission to this unspeakable horror would be cowardly and unexcusable, and shameful in men struggling for freedom.

Human progress cannot be stopped with a gun or a club. This has been tried again and again throughout the centuries and mankind has kept on moving. The man in the ditch will certainly climb out in spite of the swaggering industrial despot. He will fight to get out; and he is entitled to high praise for this display of courage, for he is fighting for you, for me for everybody."

(From United Mine Workers Journal, issue of May 14, 1914, page 2, two articles):

"Legislature Approves Massacre.

Grand Jury Indict Home Defenders.

Denver, Colo. May 16,

The state of Colorado has placed its stamp of approval on the murder and cremation of men, women and children at

Ludlow by murderous mine guards in militia-men's uniforms.

The coal operators paid some of these men $3.00 a day to carry out their work of slaughter. Up to the time of the Ludlow massacre there was some question as to
3688 whether these assassins should also be paid by the state.

But when they, clothed with the authority of the state, dressed in the uniform of its militia, and using the machine guns of the operators, swooped down on Ludlow April 20, burned it to the ground, killed and cremated 13 women and children and deliberately murdered Louis Tikas, and five others, they did such a noble service for Colorado that the state legislature decided this week to reward them by voting to pay them.

If there was every any question that Colorado is owned body and soul by John D. Rockefeller, that idea was dispelled this week when the state legislature met. Rockefeller and his gang immediately took charge. Speaker Slattery, of the house of representatives, saloon keeper and gambler, whipped the corporation tools into line. Public sentiment alone prevented the establishment of a mounted Cossack force and a gun bill.

The passing of a million dollar appropriation bill, however, shows clearly what labor can expect from the Colorado state government. Seven hundred thousand dollars of this is to pay the militia thugs and operators' assassins who for over six months intimidated the strikers in southern Colorado, murdered and assaulted them, insulted their womanhood and robbed and plundered their homes. This amount includes payment of the gunmen who were responsible for the Ludlow horror.

Colorado spent $700,000 in an attempt to break the strike of the coal miners. Today victory for the miners is but a short distance away. Ammons and Chase and others of the operators' tools determined however that victory shall
3689 not come to the miners until they have spent their every effort, so they had their gambler-led legislature provide $300,000 addition so that the militia can go back to the strike zone, if the federal troops leave, to complete their work of carnage.

The corporations played their usual card in labor struggles this week when they indicted six men for murder and

more than 100 for conspiracy to murder one man who was killed in the Boulder county troubles.

'Indictments of this character need not come as any surprise to men prominent in the labor movement', said John R. Lawson, who is in active charge of the strike. 'Sometimes they come because the county officials are honest and jealous to perform their duty and serve their constituents and in an effort to preserve the law. Sometimes they come in a blind effort to help the corporations in their mad scramble to destroy all vestige of organized labor through intimidation and persecution. At other times they come because some of the county officials are anxious to build up on a false foundation, at the expense of the county and the people, they are sworn to serve a political future. I have not at any time been able to discover a district attorney who was even willing to prosecute the coal corporations in whose mines dozens of men have been murdered through their negligence. The miners' officials or the miners do not fear to meet a jury in any court of any country where they have an opportunity to get that measure of justice to which they are entitled.'

3690 Among those indicted for murder was W. T. Hickey, secretary of the State Federation of Labor. His case shows how far the rotten government of the state will go in their struggle to destroy every vestige of labor in Colorado. Hickey not only was not in the fighting in which one was killed, but he was not even in Boulder county, where the indictment was brought in by the grand jury.

But Hickey is prominent in the labor movement, and that is sufficient reason for indictment on any charge in Colorado.

Federal troops have restored order in the strike district. The future must take care of itself. The serious condition of affairs in Mexico makes it certain that federal troops will not remain in Colorado very long. When they leave the operators will soon find an excuse to have their pet Ammons send the militia back to 'preserve the peace'. The people of the United States know what this potpourii of barrel-house bums, Baldwin thugs, women and children murderers and cremators did before. A leopard cannot change its spots. It is but natural to expect that they will renew their carnival of slaughter and carnage."

"3,000 Rifles Surrendered to Soldiers.

(By United Press).

Trinidad, Colo., May 14.

More than 3000 fire arms and about 70,000 rounds of ammunition have been surrendered to the federal soldiers here

at 5 p.m. Wednesday, when the time for voluntary disarmament, according to Col. James Lockett's orders, expired.

Army officers said they believed both sides had given up all available guns, and a general search and seizure of arms was regarded as improbable.

3691 The striking miners gave up, altogether, 852 rifles, revolvers and shotguns, while the mine guards surrendered 5 machine guns and 840 rifles, revolvers and shotguns. Three hundred of the rifles turned in by the strikers were one shipment from a New York manufacturer.

Figures are for Huerfane and Los Animas counties only.

The new Ludlow tent colony was laid out by union officials Wednesday afternoon. It is to be almost on the site of the old colony, which was burned by state militiamen on April 20."

(From United Mine Workers Journal, issue of May 21, 1914, Page 7):

"From Oklahoma

The Crowning Crime of Capitalism.

Henryetta, Okla. May 12.

When we glance back over the ghastly history of the Alabama, West Virginia and Michigan strikes and the crimes committed against our striking brothers by capitalistic hired thugs and assassins and culmination in the horrible massacre of Ludlow, we can only say that capital has overplayed its hand. All the crimes, of Governor Comer's militia, the armored train of West Virginia, the death trap at Calumet, the cavalry charge on marching women at Trinidad and thousands less conspicuous details of the murderous war of the capitalistic class against the workers has had its cap sheaf of infamous lawless deeds when the Rockerfeller hired murders destroyed and massacred the Ludlow tent colony. This act will most certainly have the final unifying effect on the ranks of labor and if our rights must be defended with guns and our wives and children saved from bullett and flame by us with arms, let us not shirk the responsibility. To
3692 many of us who have always opposed direct action in the past, the bitter lesson has been written in the blood of the innocents of Ludlow, and seared into our minds by their burning tent homes that labor must use every weapon at our

command, even unto the high power rifle and machine gun, if we will win our battles. Thugs and assassins murder our comrades in safety, protected by the laws and go unpunished for their lawless deeds. And so we are going over to the direct actionists by the hundred now. Their philosophy is the only visible solution. We would be worse than folls and cowards if we sat idly by and be clubbed by the militiamen, assassinated by deputy sheriffs and our wives and children murdered in their homes by hired assassins. In our future strikes our tents will and must be protected by high power rifle and the punishments the state militia refuses must be meted out by ourselves.

Anarchistic! Our enemies will cry. No, sir. It is simple justice opposing the anarchy of the mine owners. Until labor unites at the ballot box and the mines, mills and factories are restored to the people and the need of militiamen and hired thugs by our plutocratic masters is passed, these battles will of necessity be fought and be may as well meet the issue. We have conducted peaceable strikes and been murdered and clubbed in our passiveness. The professional gun men is abroad in the land and where a strike is in progress they gather, spreading murder and disorder, under obligation to no law but their own fiendish will, knowing no restraint but the mine owners' will, and these conditions must be met. Protest meetings and resolutions to congress have accomplished nothing. The murder of our brothers has gone merrily on. Appeal to constituted authority has been in vain.

3693 And so we are face to face with a reality, not a theory, and it must be met with something beside denouncing protests, indignant resolutions and meaningless platitudes. Every rifle turned upon us and our camps and every blazing torch applied to our homes must be met with rifle and blazing torch, or the world will rightly judge us as spineless caricatures of men. Why should we dodge the issue and rant about law and order and rights of citizens when law and order leagues and citizens' alliances are murdering our brothers, desecrating our homes and burning our wives and children and are defended by their dastardly deeds by the powers of the state governments. And so we have the issue to meet and let us meet it like red blooded men. We can put down the anarchy of capital only with the same measures employed against us.

GEO. R. MOORE."

37.

The court erred in sustaining the objection to the following question asked the witness, Pete Hanraty:

"Now, is a strike against an attempted open shop operation in a field a local strike, as defined by the miners?"

38.

The court erred in sustaining the objection to the following question asked the witness, Pete Hanraty:

"I will ask you if the strike against an attempted open shop operation is a local strike?"

39.

3694 The court erred in sustaining the objection to the following question asked the witness, Pete Hanraty:

"What is mean by 'trouble of a local character', as understood in practice by the miners?"

40.

The court erred in sustaining the objection to the following question asked the witness, Pete Hanraty:

"Did such an attempt (to operate open shop in a union field) involve any miners except those in the particular district where you were?"

41.

The court erred in sustaining the objection to the following question asked the witness, Pete Hanraty:

"Would the starting up of a mine open shop in Arkansas, having a production of 4,000 tons a day, affect the relations between the union miners and union operators in District 21, would that be large enough to have any affect upon the situation?"

42.

The court erred in sustaining the objection to the following question asked the witness, Pete Hanraty:

"Now, state whether or not a strike involving the question that this strike was over, as testified by the witnesses, and carried on in the manner described, is a local strike or not?"

43.

3695 The court erred in sustaining the objection by the defendants, and in excluding the following offer of proof on the part of the plaintiffs, in connection with the witness Pete Hanraty:

"Mr. Drinker: I offer to prove by the witness on the stand that the term 'local strike' is a term which has a peculiar significance among the miners organization, well understood by them; that it refers to a strike which involves the interpretation of the contract between the miners and the operators; that the term does not apply to a strike which is directed against an open shop attempted by a former union operator in a union field, for the reason that such a strike as that involves not merely the locality where the particular mine operates, but the other districts and the entire National organization, because such an operation, if allowed to go on without opposition or suppression by the miners union, would inevitably spread first to the adjoining union mines, and then to the other union mines, to the adjoining districts, and ultimately to the entire National organization."

44.

The court erred in sustaining the objection by the defendants, and in excluding the following offer of proof on the part of the plaintiffs, in connection with the witness Pete Hanraty:

"Mr. Drinker: I further offer to prove by this witness that under the provisions of Section 1 of Article 12 of the Constitution of District 21 of the United Mine Workers of America, a controversy over an attempted open shop operation of a former union operator in a union field does not constitute 'trouble of a local character' within the meaning of that section, and that those words, 'trouble of
3696 a local character' have a peculiar significance to the Miners' organization, accepted by them in practice and followed different from the ordinarily accepted meaning of those words."

45.

The court erred in the course of the trial in holding that the value of the leases, forfeited as the approximate result of the destruction of the property, could not be included in the measure of damages.

46.

The court erred in stating in the presence of the jury that the measure of damages would be the difference between the value of the property as it stood before the destruction, and the value immediately after the destruction, before the leases were forfeited as the approximate result of the destruction, thus excluding from the damages the recoverable value of the leases destroyed as a result of the destruction of the leased property.

47.

The court erred in sustaining the objection to the following question asked the witness, B. W. Traer:

"Now, Mr. Traer, independent of these proceedings, as reported in these books, I wish you would state from your own recollection, what in the course of these debates and proceedings was the position taken respectively by the operators and miners relative to the obligation of the miners under the Chicago agreement of 1898, in connection with the pro-
3697 tection of the union miners from the competition of the non-union mines?"

48.

The court erred in excluding the following offer of proof on the part of the plaintiff relative to the amount of money in the National treasury of the United Mine Workers of America and the subordinate district treasuries thereof, as shown by the report of William B. Wilson, Secretary-Treasurer of the United Mine Workers of America, for the year 1906:

"It is the amount of money that was under the control of the National organization, and to show that the National organization had control of all of their funds. x x x x x

It is merely to show what the International had in their treasury. x x x x x

I merely want to show they (the districts) reported the amounts in their treasuries as showing that they were all under the one control."

(That portion of the report so offered in evidence, and excluded by the court, is in words and figures as follows, to-wit):

"The amount we have in our National treasury does not by any means show the full financial strength of our organization or its defensive power.

There is in the National treasury	$389,546.40
Reports from 20 of our 23 districts show in the district treasuries,	1,536,078.03
Reports from 21 of our 31 sub-districts show in their treasuries,	115,449.99
Making a total in the treasuries of the various branches of our organization, of	$2,679,134.43

3698 These figures would undoubtedly be materially increased if we had complete returns from the districts, sub-districts and local union."

49.

The court erred in sustaining the defendants' objection to the following question asked of the witness Dr. H. P. Routh:

"Did you hear any discussion amongst the union miners prior to July 1, 1914, relative to the permitting of small co-operative mines to run during a strike or suspension?"

50.

The court erred in sustaining the defendants' objection to the following question asked of the witness, Eugene McAuliffe:

"From the point of view of operating efficiency, railroad connection, and all physical conditions other than the condition in connection with the employment of labor under the union contract, what mines in the Arkansas field would you say were the best mines?"

51.

The following question and answer having been asked and answered by the witness, J. G. Puterbaugh:

"Now, Mr. Puterbaugh, in case of a mine in the Hartford Valley producing in 1914 say 800 tons a day, operating under a union scale, allowing but one man to work in a room, with all the other conditions then in effect under the union scale at that time, with an actual cost of $1.75 per ton, how much in your opinion could that cost have been reduced if that mine had been permitted in 1914 to run open shop, taking into consideration possible increase in daily and annual
3699 output, and possible readjustment of wages but not a general reduction in wages? x x x

A. I would say fifty cents per ton reduction.

The court erred in sustaining the objection of the defendants to the further question asked of the said witness:

"In that answer did you take into consideration the possibility of increase in both the daily and the annual output of the mine by reason of open shop?"

52.

The court erred in sustaining the objection of the defendants to the following question asked of the witness William V. Womack:

"Did you have any substantial fear that the guards were coming into Hartford to destroy the property and take lives as these rumors had indicated?"

53.

The court erred in sustaining the defendants' objection and excluding the following offer of proof on the part of the plaintiffs:

"Mr. Drinker: We next offer from the proceedings of District 21, being Exhibit 53 of the old record x x x

"On page 141 of Mr. Covington's speech in the District convention in the same book x x x

"Mr. Drinker: He was telling District 21, he was there to explain certain matters and he was not giving legal advice at all. I don't want to say before the jury what he was explaining but there is one statement that I ought to show that he made, and it was in convention of District 21 about President Steward on the 6th of April x x x x x It is
3700 just to show why Stewart took that trip. The other evidence shows that he was in Kansas City with White and came here and went back again x x x

"Mr. Drinker: This is a statement by him to District 21 of a fact. Mr. Covington was a conspirator—"

The matter referred to, so offered in evidence and to which the objection was sustained is in words and figures as follows, to-wit:

"At the time the people gathered at No. 4 in April, 1914, I was at Kansas City representing the National organization in the trial of a cause pending in the courts in that city when a telegram came announcing there had been trouble at Prairie Creek. Upon receipt of this telegram your President, Mr. Stewart, left Kansas City and came to Arkansas for the purpose of ascertaining the cause of the trouble."

54.

The court erred in sustaining the defendants' objection to the testimony of witness F. M. Morgan regarding the further acts of intimidation which occurred in January, 1915, as a part of the conspiracy alleged in the complaint.

55.

The court erred in sustaining the defendants' objection to the following question asked of witness, William McLach-

lan on cross examination: "Was there no reason why you, as a union man, did not want Bache to get shipping coal?"

56.

The verdict is contrary to the law.

3701

57.

The verdict is contrary to the evidence.

58.

The verdict is against the preponderance of the evidence.

59.

The verdict is not supported by any evidence whatever.

Wherefore, the plaintiffs in error pray that the judgment of the United States District Court for the Western District of Arkansas, Fort Smith Division rendered in this cause be in all things reversed and remanded for a new trial and for such other relief as may be proper in the premises.

HENRY S. DRINKER, JR.,
JAMES B. McDONOUGH,
Attorney for Plaintiffs in Error.

3702

Order Allowing Writ of Error.

(Entered in U. S. District Court November 3, 1923.)

Before Judge Pollock.

On this 3rd day of November, 1923 came the plaintiffs by their counsel, and filed herein, and presented to the court, their petition praying for the allowance of a writ of error, and filing therewith an assignment of errors intended to be used by them, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated may be sent to the United States Circuit Court of Appeals for the Eighth Judicial Circuit of the United States, and that such other and further proceedings may be had as may be proper in the premises. Upon consideration whereof, the court does allow the writ of error upon the plaintiffs giving bond according to law in the sum of $500.00, which shall operate as a cost bond herein, when approved by the clerk of this court.

It is further ordered and adjudged that the assignment of errors be accepted and filed, and that the clerk make out a perfect and complete transcript of the record, and proceed-

ings herein, and transmit same to the United States Circuit Court of Appeals for the Eighth Circuit, as provided by law.

JOHN C. POLLOCK, Judge.

3703 Cost Bond on Writ of Error.

(Filed in U. S. District Court November 5, 1923.)

In the United States Circuit Court of Appeals for the Eighth Circuit.

Coronado Coal Company, et al., Plaintiffs in Error.

vs.

United Mine Workers of America, et al., Defendants in Error

Know All Men By These Presents, That we, Clyde H. Finley, Receiver, Coronado Coal Company, Denman Coal Co., Mammoth Vein Coal Company, Bache-Denman Coal Company, Hartford Coal Company, Sebastian County Coal Company, Mammoth Vein Coal Mining Company, Mammoth Vein Royalty Company, Prairie Creek Coal Mining Company, as principals, and American Surety Company of New York, as surety, are each and all held and firmly bound unto the United Mine Workers of America and the other defendants in error in this court, defendants in the District Court, in the penal sum of $500.00, to the payment of which well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 5th day of November, 1923.

The condition of the above obligation is such that whereas heretofore, to-wit: on the 27th day of October, 1923, the defendants and obligees herein recovered a judgment against the plaintiffs herein for costs; and,

3704 Whereas, in said judgment the court adjudged that the plaintiffs were not entitled to recover against the defendants; and,

Whereas, the principals above named have appealed said cause to the United States Circuit Court of Appeals of the Eighth Circuit;

Now, therefore, if the said principals hereinbefore named shall and will duly prosecute said appeal to effect and answer all costs if they fail to make good their plea, then the above obligation shall be null and void; otherwise the same shall remain in full force and virtue in law.

CLYDE H. FINLEY, Receiver,
CORONADO COAL COMPANY,
BACHE-DENMAN COAL COMPANY,
DENMAN COAL COMPANY,
SEBASTIAN COUNTY COAL COMPANY,
MAMMOTH VEIN COAL MINING COMPANY,
MAMMOTH VEIN COAL COMPANY,
HARTFORD COAL COMPANY,
MAMMOTH VEIN ROYALTY COMPANY,
PRAIRIE CREEK MINING COMPANY,
Principals.

By Clyde H. Finley,
Receiver.

AMERICAN SURETY COMPANY OF NEW YORK,
By Cecil R. Warner, Resident Vice-President,

Attest: HARRY K. ALBERS,
Resident Assistant Secretary. (Seal)
Surety.

No. 553 Law. Coronado Coal Company, et al, Plaintiffs vs. United Mine workers of America, et al, Defendants. Cost Bond on Writ of Error. Bond Approved November 5, 1923. Wm. S. Wellshear, Clear, Filed November 5. 1923. Wm. S. Wellshear, Clerk.

3705 Praecipe for Transcript.

(Filed in U. S. District Court November 5, 1923.)

To the Clerk of the Above Court:

You will please include in the Transcript of the above styled cause, all of the pleadings, motions (except the motion for new trial and order refusing the same), papers and processes, since the filing of the mandate from the Supreme Court of the United States, together with the following:

Third Amended Complaint, filed February 27, 1917, and all amendments thereto,

Answers of all defendants to third Amended Complaint,

The Mandate of the Supreme Court,

All record entries, including verdict and judgment thereon, subsequent to the above mandate,

Bill of Exceptions,

Courts' charge to the jury in directing a verdict for the defendants,

Petition for Writ of Error,

Assignment of Errors,

Bond for Costs, and stipulation relating thereto,

Writ of Error and allowance thereof,

Citation and Acknowledgment of Service thereof,

And this Praecipe.

H. S. DRINKER, JR.,
JAMES B. McDONOUGH,
Attorneys for Plaintiffs in Error.

3706 We hereby waive service of the above on this 2nd day of November, 1923.

HENRY WARRUM,
Attorneys for Defendants.

3707 (Clerk's Certificate to Transcript.)

I, Wm. S. Wellshear, Clerk of the District Court of the United States for the Western District of Arkansas, certify the foregoing pages to be and constitute a true and correct copy of the record, assignment of errors, and all proceedings in the case of Coronado Coal Company, et al., Plaintiffs vs. United Mine Workers of America, et al., No. 553 Law, in accordance with the praecipe of counsel, as the same appear on file and of record in my office as such clerk in the Fort Smith Division of said District.

Citations, with acceptance of service are annexed and transmitted herewith.

In Testimony Whereof, I hereunto set my hand and affix the seal of said court at office in the City of Fort Smith, Arkansas, this November 27, 1923.

Seal
U. S. Dist. Court
West. Dist.
of Ark.

WM. S. WELLSHEAR,
Clerk.
By Irma Smith, D. C.

Filed Nov 30 1923 E. E. Koch Clerk

IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 6541

CLYDE H. FINLEY, Receiver, et al., Plaintiffs in Error,

vs.

UNITED MINE WORKERS OF AMERICA et al.

APPEARANCE OF COUNSEL—Filed Dec. 26, 1923

The Clerk will enter my appearance as Counsel for the Plaintiffs in Error.

Henry S. Drinker, Jr., Edwin A. Lucas, 750 Bullitt Building, Philadelphia.

[File endorsement omitted.]

(Appearance of Mr. James B. McDonough as Counsel for Plaintiff in Error)

The Clerk will enter my appearance as Counsel for the Plaintiffs in Error.

James B. McDonough.

[File endorsement omitted.]

(Appearance of Mr. Henry Warrum and Mr. G. L. Grant as Counsel for Defendants in Error)

The Clerk will enter my appearance as Counsel for the Defendants in Error.

Henry Warrum, G. L. Grant.

[File endorsement omitted.]

(Appearance of Mr. William A. Glasgow, Jr., as Counsel for Defendants in Error)

The Clerk will enter my appearance as Counsel for the Defendants in Error.

Wm. A. Glasgow, Jr.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER CONTINUING CAUSE

This cause having been called for hearing in its regular order, argument was commenced by Mr. Henry S. Drinker, Jr., for plain-

tiffs in error and the hour for adjournment having arrived further argument was postponed until tomorrow morning.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ARGUMENT AND SUBMISSION

This cause having been called for further hearing, argument was continued by Mr. William A. Glasgow, Jr., for defendants in error and concluded by Mr. Henry S. Drinker, Jr., for plaintiffs in error.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

OPINION—Filed July 12, 1924

Mr. Henry S. Drinker, Jr. (Mr. James B. McDonough and Mr. Edwin A. Lucas were with him on the brief), for plaintiffs in error.

Mr. William A. Glasgow, Jr. (Mr. G. L. Grant and Mr. Henry Warrum were with him on the brief), for defendants in error.

Before Sanborn, Lewis and Kenyon, Circuit Judges

KENYON, Circuit Judge, delivered the opinion of the Court.

This is the third appearance here of this case. The first time the correctness of the ruling of the United States District Court, Western District of Arkansas in sustaining a demurrer to the complaint was challenged. Dowd v. United Mine Workers of America, et al., 235 Fed. 1.

The second time the case was brought to this court it was upon writ of error to review the proceedings of the district court resulting in a judgment against the present defendants in error. United Mine Workers of America, et al. v. Coronado Coal Co., et al., 258 Fed. 829. This court affirmed the judgment of the trial court outside of a question of interest.

The case then proceeded on its way to the Supreme Court of the United States where it was reversed and remanded to the District Court. United Mine Workers of America, et al. v. Coronado Coal Company, et al., 259 U. S. 344.

On the second trial of the case in the United States District Court for the Western District of Arkansas no new pleadings were filed. The issues were the same, and at the close of the evidence the court directed a verdict for the defendants in error, holding that the evi-

dence did not show that the direct purpose of the alleged conspiracy was to interfere with or monopolize interstate commerce; that the interference with such commerce was incidental, and hence that plaintiffs in error could not recover under the Sherman Anti-Trust Act.

The Coronado Coal Company is now in the hands of a receiver, Clyde H. Finley.

Plaintiffs in error bring writ to this court and ask for a reversal of the judgment of the trial court.

I

The facts giving rise to this cause of action are set out fully in the previous decision of this court in 258 Fed. 829 and in United Mine Workers of America, et al. v. Coronado Coal Company, et al., 259 U. S. 344. They need not be repeated here. They relate to the alleged actions of defendants in error in destroying plaintiffs in error's property.

It is the well-established doctrine of the Federal Courts that questions of law determined on a writ of error or appeal are the law of the case both for the trial court and this court on a second writ of error or appeal, provided the facts remain substantially the same. Thatcher v. Gottlieb, 59 Fed. 872; Guarantee Company of North America v. Phenix Ins. Co. of Brooklyn, N. Y., 124 Fed. 170; National Surety Co. v. Kansas City Hydraulic Press Brick Co., 182 Fed. 54; Town of Fletcher v. Hickman, 208 Fed. 118; Meyer & Chapman State Bank v. First Nat. Bank of Cody, 291 Fed. 42.

The Supreme Court of the United States passing on the former record held as to the International Union that the strike involved was a local one, declared by officers of District No. 21, which embraced Arkansas, Oklahoma and Texas; that the circumstances were ample to supply a full local motive for the same; that the International Board was not shown to have authorized the strike or participated therein; that the acts of President White of the Internationl Union consisting of certain speeches, extracts from which are set forth in the Supreme Court opinion, did not amount to a ratification by the International Board saying, "It would be going very far to consider such acts of the president alone a ratification by the International Board creating liability for a past tort. The president had no authority to order or ratify a local strike. Only the Board could do this." Again on this question the Supreme Court said: "It is a mere question of actual agency which the constitutions of the two bodies settle conclusively. If the International body had interfered or if it had assumed liability by ratification, different questions would have arisen." It decided that a verdict should have been instructed by the trial court for the International Union, the United Mine Workers of America, its president and other officers.

As to District No. 21 and its liability, the holding in brief was that to make a case against the District under the Sherman Anti-

Trust Act it must be shown that the conspiracy to attack the Bache-Denman property and stop the non-union employment there, was with the intent to restrain interstate commerce and to monopolize the same, and to subject it to the control of the union; that the intent to injure, obstruct or restrain interstate commerce must appear as an obvious consequence of what was to be done, or be shown by direct evidence or other circumstances. The court expressed itself on this subject as follows: "And so in the case at bar, coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce unless the obstruction to mining is intended to restrain commerce in it or has necessarily such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred." And held that, while the evidence might be sufficient to show a common law liability as to District No. 21 for the acts of its members, it did not show a direct intent to restrain interstate commerce, nor that a sufficient amount of coal production was affected, to supply the inference of an attempt to restrain such commerce, and concluded with the statement: "The result of our consideration of the entire record is that there was no evidence submitted to the jury upon which they properly could find that the outrages, felonies and murders of District 21 and its companions in crime were committed by them in a conspiracy to restrain or monopolize interstate commerce. The motion to direct the jury to return a verdict for the defendants should have been granted."

II

Is there such substantial change in the evidence in the present record as to make this a new case from the one decided by the Supreme Court? The trial Court evidently concluded there was not. Plaintiffs in error urgently insist there is, and that the link missing in the former trial to make the local situation a step in an actionable conspiracy to restrain the freedom of interstate commerce which the Sherman Anti-Trust Act was intended to prevent, has been supplied.

We refer first to some of the matters in this record not in the former one claimed to create a different case from that passed on by the Supreme Court as to the responsibility of the International Organization. It is urged that the present record shows the International Organization to be a co-conspirator. While the same language may not appear in the former record bearing on this question, the same thing in effect was urged. The Supreme Court discussed whether or not the International Organization was shown to have initiated, participated in, or ratified the interference with plaintiffs in errors' business, and held it was not. The broad proposition of the International Organization cooperating with the alleged conspirators and as a part thereof, was before the Supreme Court. Indeed, all the various theories of liability of the International Organization were there considered. There are a few extracts from

the proceedings of District No. 21 appearing in this record and not in the former one. Some of them relate to speeches of National Secretary-Treasurer Green, and National Vice President Hayes, but these extracts are not different from other speeches appearing in the record of members of the organization.

The claim is also made by plaintiffs in error that the present record shows the plan for destruction of plaintiffs in errors' business and property was originated by National President White, and carried out pursuant to his express order, and the White speech at the Special Convention of District No. 21 held May 8, 1914, is referred to in extenso to sustain this claim. Extracts from this speech were before the Supreme Court when it considered the former case. It is claimed, however, that the testimony of the witness McNamara, who is a new witness, supplements this speech in a way to show active participation of White. The main new evidence in the present record is concededly the evidence of witness McNamara. A part of his testimony is as to a conversation at Fort Smith with District President Stewart some time after the speech of White, before referred to. McNamara testifies that Stewart told him, "that he had been up to Kansas City and had a talk with White and that they had arranged a 'plan' up there to prevent Bache from producing coal." McNamara also testifies to a conversation with White in which he said, "We must prevent that coal from getting into the market, because if Bache coal, scab-dug coal got into the market it would only be a matter of time until every Union operator in that country would have to close down his mine or scab it, because the Union operators could not meet Bache competition." Further in the same conversation White said: "he didn't want the National Organization mixed up in this case; * * * we have West Virginia and Colorado on our hands, and we can not bear any more fights."

The Supreme Court has held the strike to be a local one. The International Organization by its constitution had settled the manner by which it would participate in a local strike. The Supreme Court in this particular case has held that President White had no authority to order and ratify a local strike; that only the Board could do this. If no one but the Board could ratify a local strike, and if this was a local strike, both propositions being directly decided by the Supreme Court, then the purported statements of White, if made to McNamara, could not amount to a ratification, nor could they show a participation by the Board. In fact, it appears from one of the statements that White did not want to National Organization mixed in the affair.

It is also urged that the record now shows that White had the power between meetings of the Board to do everything that the Board could do, and that consequently he stood in the place of the Board. This contention is based on the minutes of the International Executive Board of September 13th to September 18th, 1915, and refers to and is entitled "West Virginia case," and is in reference

to the granting of financial assistance to the miners there. The excerpts are as follows:

"The Committee's report was read by Board Member Harlin.

Board Member Haggerty: In order that the matter be subject to first approval, I move that that part of the committee's report be tabled. That part sets down a definite policy on which we must act. I leave the matter in the hands of the President, so that he can act.

President White: I have been lenient with my prerogatives and have always recognized that I was but the servant of the Board, who are all in turn the servants of the organization. I do not understand that the committee's report in any way with the prerogatives set forth in the constitution, devolving upon the President.

Board Member Harlin: The report of the committee as read expresses my opinion; no argument, whatever, could change it. So far as I am personally concerned, I do not believe I would have the authority to attempt to curtail the well recognized authority of the President between Board meetings. In every case that arises between Board metings, it is the prerogative of the President to exercise his judgment, subject to review by the International Board. In regard to this situation as it has been presented to us, this recommendation expresses my opinion; there has been no argument that would justify me in supporting a motion to strike out any portion of it. I intend to stand on the recommendation as read."

In this, Board Member Haggerty, seems to construe the power of the president as to matters arising between Board meetings, to exercise his judgment, subject to review by the International Board. The Minutes here were with relation to a situation in West Virginia, the facts and circumstances concerning which are not in the record. In these minutes it appears that White expressly stated that he was the servant of the Board, and there is nothing to show that he construes his power as Haggerty construes it. Be this as it may, White's actions as bearing on the question of ratification or participation for the International Organization were before the Supreme Court, and while these particular minutes with the construction of power as given by Haggerty were not before the court, they had the speech of White so frequently referred to in this case, and commented unfavorably upon his actions. The McNamara testimony, while bearing on the same question as to White's interference and participation, is merely cumulative. Its effect is weakened somewhat by the statements of White that he did not want the National Organization to become a party to the affair. The minues introduced to show his power between meetings, amount simply to the construction of his power by the Board Member Haggerty, and that construction is in conflict with the construction given by the Supreme Court when it said, "The president had not authority to order or ratify a local strike. Only the Board could do this."

The Supreme Court has squarely held that under the constitution of the International Organization there was no power in the Presi-

dent to commit it to a strike without the action of the Board. That is the settled law, as we view it, of this case.

III

As to District No. 21 and liability thereunder, the Supreme Court held that the evidence was sufficient to show that said District and the individual defendants connected therewith participated in a plot to deprive plaintiffs in error of their employes by intimidation and violence, and in the course of carrying out the plot destroyed their properties, and that a common law action for damages could be sustained. But it held that, while under the general doctrine of agency, the District was responsible, the things done were not in pursuance of a conspiracy to restrain and monopolize interstate commerce, and consequently there could be no recovery against the District under the Sherman Anti-Trust Act, saying: "It was necessary, however, in order to hold District No. 21 liable in this suit under the Anti-Trust Act, to establish that this conspiracy to attack the Bache-Denman mines and stop the non-union employment there, was with intent to restrain interstate commerce and to monopolize the same, and to subject it to the control of the union."

The court goes into an extended review of the various resolutions introduced in the district meetings, speeches of various operators and miners, and after careful consideration of all the evidence, arrives at this conclusion: "What really is shown by the evidence in the case at bar, drawn from discussions and resolutions of conventions and conference, is the stimulation of union leaders to press their unionization of non-union mines not only as a direct means of bettering the conditions and wages of their workers, but also as a means of lessening interstate competition for union operators which in turn would lessen the pressure of those operators for reduction of the union scale or their resistance to an increase. The latter is a secondary or ancillary motive whose actuating force in a given case necessarily is dependent on the particular circumstances to which it is sought to make it applicable."

The core of the matter is the following from the decision: "And so in the case at bar, coal mining is not interstate commerce and obstruction of coal mining, though it may pervent coal from going into interstate commerce, is not a restraint of that commerce unless the obstruction to mining is intended to restrain commerce in it or has necessarily such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred." The practical holding of the Court therefore is: That the record was not sufficient to show a direct intent upon the part of the alleged conspirators to restrain or monopolize interstate commerce; that the intent was to unionize the mines as a means of bettering the conditions and wages of the workers; also to lessen interstate competition for union operators; that any effect on interstate commerce was incidental to the direct purpose to unionize the mines, and especially to prevent Bache from operating his mines with non-union labor.

It is now claimed that new evidence is introduced showing a direct

intention of the conspiracy to restrain interstate commerce; further that reasons now appear, other than bitterness toward Mr. Bache arising out of his breach of the contract to use union labor and the importation of foreign laborers, for the destruction of his property; and that the missing link referred to by the Supreme Court has been supplied as follows:

1st. By proof of debates in conventions of the Southwest Miners Association participated in by district officials and by national officers showing the insistence by the operators of protection from the competition of open shop operators reaching their markets.

2nd. By the testimony of union operators in District 21 and by Hanraty, the former President of District 21 that the officers had continuously discussed competition of open shop coal, and by speeches made by national officers who attended the local conventions.

3rd. The uncontradicted testimony of operators that if permitted to operate open shop in 1914 without molestation by the union, the Bache-Denman Companies could have reduced their $1.75 per ton cost of production by from 50c. to 80c. per ton, and have increased the actual output of their mines from 5,000 tons a day to 7,500 tons per day.

4th. By testimony that Stewart and other district officers had discussed the impending competition of the Bache-Denman open shop coal in Oklahoma, Minnesota and other states as a menace to their relations to the union operators.

5th. The testimony of witnesses as to the fact of stopping the shipment of coal being directly discussed among the miners, and

6th. The testimony of McNamara that the union miners had destroyed the property to prevent the plaintiffs from shipping its coal in interstate commerce.

The additional record as to debates in the Southwest Miners Association, and statements of operators and miners as to non-union coal being imported from other states and the necessity of preventing the same is not new. There are hundreds of pages of the former record of statements of operators and miners in Central Competitive Territory to the same effect. Nor does the new evidence of proceedings as to District No. 21 showing the feeling of the miners against the non-union production of coal and the determination to avoid it—nor the declarations by Stewart and Hanraty with reference thereto and the general policy of District No. 21, present anything substantially new. The evidence of Mr. Hanraty, who was a new witness, shows that he was continually, during his connection with the miner's union, fighting against non-union coal taking the union markets, and that it was the object of the miners to increase the cost of mining to the orperators, and that he insisted on organization in Colorado and Alabama to create conditions so they could not produce cheap coal and take the markets from the union mines. This is the same line of evidence that fills the pages of the former record with the speeches of operators and union miners in the con-

ferences of the Competitive Central Field. Nor do we attach the same importance to witness Tharel's testimony as counsel for plaintiffs in error seem to. Tharel was a storekeeper at Midland in 1914 and testifies as to hearing union miners discuss the markets reached by the Bache-Denman Company where union coal was sold. Of course, there was much discussion of this character. The Unions were determined to stop the production of non-union coal. They did not care apparently whether it interfered with interstate commerce or not. Their determined purpose was that Bache should not do business as a non-union operator, and naturally every phase of the matter was the subject of discussion among the miners.

The Supreme Court in its opinion referred to the circumstance that a car loaded with coal and billed to a town in Louisiana was burned by the conspirators, and stated that the car had been used in a battle by some of Bache's men for defence, and that its burning was only a part of the general destruction.

It is sought by the evidence in the present case to show that this is not the fact, and that the burning of the car was not a part of the general des-ruction; that not only this car, but others, were destroyed, and that this was the result of entirely independent actions.

The thought of the Supreme Court seems to have been that the burning of a car, even billed in interstate commerce and about to move on its way, was not sufficient to show a specific intent, but that it was a part of the general destructive tactics. The present record does not materially change this situation. There is no substantial difference here from the former case on the question of a direct intent to restrain interstate commerce on the part of District No. 21 and its membership.

On the presumed intent, because of the extent of coal production affected, it is claimed that the Supreme Court was mistaken in the figures set forth in the opinion as to the capacity of the Bache-Denman mines. This matter was presented to the Supreme Court in the petition for rehearing, and the claim of additional production was urged, but it does not seem to have changed their view. Apparently in its opinion the amount which could be produced at the Bache-Denman mines would have "no appreciable effect on the price of coal or non-union competition," in the great national production of coal.

The Supreme Court in its decision in this case has emphasized the line of demarcation as to the application of the Sherman Anti-Trust Act to conspiracies where the intent is directly to affect interstate commerce and where such result is merely incidental. Since that decision the Supreme Court of the United States in United Leather Workers' International Union, et al., v. Herkert & Meisel Trunk Company et al., decided June 9, 1924, has reiterated some of the doctrines of the Coronado case, as we have pointed out in an opinion this day filed in United Mine Workers of America v. Pennsylvania Mining Company. The Federal Courts again and again have held that the making of goods and the mining of coal are not commerce, and that obstruction to coal mining is not a direct obstruction to interstate commerce. They have repeatedly

said that to bring a case under the inhibition of the Sherman Anti-Trust Act there must be a direct intent to restrain or monopolize interstate commerce. It seems a work of supererogation to review these cases. Many of them are grouped in United Leather Workers' International Union v. Herkert & Meisel Trunk Company before referred to. We think the trial court was correct when he said, in summing up this case and holding that the alleged conspiracy was for the purpose of unionizing the mines and of preventing Mr. Bache from working his mines non-union, "I don't think it can ever be a different case, but while I think the conspiracy, at least to a certain point, is amply established, I don't think that there is evidence here that it was the direct purpose to interfere with or monopolize interstate commerce. It was for a different purpose, and that was a mere incident to it."

We are satified there is no such substantial change in the proof here from that of the former case determined by the Supreme Court as to constitute a new case. It is the same case and the law announced there is the law of this case. Even granting the record here to be stronger than in the previous trial on the question of the intent of the alleged conspiracy, yet in the light of the decision there, it fails to change the status of the International Organization as to liability, and fails to show that the direct intent of the conspiracy as to District No. 21 and its officers and subsidiary unions was to restrain or monopolize interstate commerce. The judgment of the trial court is affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT—Filed July 14, 1924

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Arkansas, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that United Mine Workers of America, and others named in the citation as defendants in error, have and recover against Clyde H. Finley, Receiver, and others named in the citation as plaintiffs in error, the sum of Twenty Dollars for their costs herein to be collected according to law.

In United States Circuit Court of Appeals

Petition for and Order Allowing Writ of Error

To the Honorable Walter H. Sanborn, Presiding Judge of the Circuit Court of Appeals of the Eighth Circuit, and to the said Circuit Court of Appeals and the Supreme Court of the United States:

Come now the plaintiffs and each of them herein, to-wit: Clyde H. Finley, Receiver of each of said Companies, and Coronado Coal Company, Denman Coal Company, Mammoth Vein Coal Company, Bache-Denman Coal Company, Hartford Coal Company, Sebastian County Coal Company, Mammoth Vein Coal Mining Company, Mammoth Vein Royalty Company, and Prairie Creek Coal Mining Company, by themselves and by Clyde H. Finley, their Receiver, who are plaintiffs in error in the Supreme Court of the United States and who were plaintiffs in error in the Circuit Court of Appeals for the Eighth Circuit in the above entitled cause and who were the plaintiffs in the cause in the District Court of the United States for the Western District of Arkansas, Fort Smith Division and the United Mine Workers of America, United Mine Workers of America District 21, and others were defendants; and the said plaintiffs in error deem themselves aggrieved by the various errors occurring at the trial of the cause in the District Court aforesaid, and now deem themselves aggrieved by the various errors occurring in the hearing, proceedings, orders and judgments of the said United States Circuit Court of Appeals for the Eighth Circuit, which errors will more fully appear in the Assignment of Errors filed herewith and made a part of this Petition.

Wherefore, the plaintiffs in error pray that a writ of error may be issued in their behalf out of the Supreme Court of the United States for the correction of errors aforesaid complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States aforesaid; that upon hearing in said Supreme Court of the United States the cause be reversed and remanded and the orders, rulings and judgments of the said Circuit Court of Appeals be reversed, and that the plaintiffs in error have such other and further relief as may be proper in the premises.

James B. McDonough, Henry S. Drinker, Jr., Edwin A. Lucas, Attorneys for Plaintiffs in Error.

Writ of Error allowed as prayed this 5th day of September, A. D. 1924.

Kimbrough Stone, United States Circuit Judge, Eighth Circuit.

Jurat showing the foregoing was duly sworn to by James B. McDonough omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ASSIGNMENT OF ERRORS—Filed Sept. 6, 1924

Come now the plaintiffs in error, named in the above entitled caption, being the plaintiffs in error in the Circuit Court of Appeals and the plaintiffs in the cause below and file the following assignment of errors appearing upon the record in this cause which plaintiffs in error aver to have occurred in the proceedings, orders, decisions and judgments of the said United States Circuit Court of Appeals in the hearing of said cause on writ of error thereto and for which the judgment should be reversed:

1. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the motion of the defendants for a directed verdict which motion, omitting the caption and signature, is as follows:

"The defendants severally move the Court to instruct the jury to return a verdict in their favor and in favor of each of them, for the following reasons:

"1. Because the evidence submitted by the plaintiffs is not sufficient to sustain a verdict in favor of the plaintiffs against said defendants, or either of them.

"2. Because it appears from the plaintiffs' own evidence that if there was any conspiracy, as alleged in the plaintiffs' complaint, that the plaintiffs were parties thereto, and participated therein, are in pari delicto and are not entitled to recover."

2. The Circuit Court of Appeals erred in sustaining the District Court in holding that the testimony did not show a conspiracy in restraint of Interstate Commerce.

3. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the testimony of the witness, H. L. Good, relative to the strike in the Irwin Coal Field, Irwin, Penna., in 1910 and 1911.

4. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection by the defendants and in excluding the following offer of proof on the part of the plaintiffs in connection with the witness, Good, and other witnesses:

"Mr. Drinker: We are going now to prove the allegations of the complaint that this strike down here was merely a part of a nation-wide conspiracy to throttle non-union coal in interstate commerce. The conspiracy began way back. Plaintiffs allege these incidents, and have skipped a large part of the first ones, and we now call this man to show what happened in the Irwin strike, that was run by the national organization, and then we are going to West Virginia and show what happened there, and in each case with one witness or two, and then out of the journals, articles to show that this was a conspiracy between the national organizations and the districts to throttle non-union coal in interstate commerce."

5. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection by the defendants and in excluding the following offer of proof on the part of the plaintiffs in connection with the witness Good, and other witnesses:

"Mr. Drinker: Your Honor observed the paragraphs in which it is alleged as a necessary step, not as a necessary step but as steps which the other side say they took in connection with this conspiracy, and we want to show there was a continuing conspiracy between the national organization and the officers thereof, and the district organization and their officers and everybody connected with this organization, to throttle non-union coal in interstate commerce."

6. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, H. L. Good:

"Q. Are you familiar, from your personal knowledge, with the events which happened in the strike in the Irwin field in 1910 and 1911?"

7. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, H. L. Good:

"Q. Are you familiar with the methods employed by the United Mine Workers in conducting that strike?"

8. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, H. L. Good:

"Q. Did you see the members of the United Mine Workers, local and district organizations, present, participating in those events?"

9. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, H. L. Good:

"Q. Did you see acts of violence instituted by these members, and representatives during that strike?"

10. The Circuit Court erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, H. L. Good:

"Q. Are you familiar with the methods employed by the United Mine Workers in connection with that strike to insure publicity of their side of the affair?"

11. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection by the defendants and in excluding the following offer of proof on the part of the plaintiffs in connection with the witness, H. L. Good:

"Mr. Drinker: I will make an offer. I offer to prove by the witness on the stand and other competent witness that in the years 1910 and 1911 a strike was conducted in the Irwin field of Pennsylvania, endorsed by the National organization of the United Mine Workers, that the purpose of that strike was to organize the then open shop mines in that district, for the purpose of protecting operators operating union mines in adjoining states, that the strike was conducted with violence, intimidation, deliberately by the United Mine Workers for that purpose, that the national organization knew and approved of these matters, that this was a step in a nation-wide conspiracy conducted by the United Mine Workers in all of the districts, and the members thereof, for the purpose of throttling non-union coal, or open shop coal, and keeping it out of interstate commerce."

12. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection by the defendants and in excluding the following offer of proof on the part of the plaintiffs in connection with the witness, H. L. Good:

"Mr. Drinker: We offer to prove by this witness and other competent witnesses that during that strike the United Mine Workers deliberately conducted a campaign of publicity with the intent to deceive the public into believing the facts to be different from the facts deliberately circulated to the public, for the purpose of inflaming the miners of the districts, and getting a public opinion on their side, and that this was a part of the conspiracy in question, and further that the system of publicity, their methods or acts, and the whole matter of conducting the strike was of such a nature as to show on their face a similarity with the methods employed in the strike in Arkansas in 1914, as to produce the inevitable conclusion that it was all a part of the same scheme and conspiracy."

13. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection by the defendants and in excluding the following offer of proof on the part of the plaintiffs in connection with the witness, H. L. Good:

"*Q.* Mr. Drinker: I further offer to prove by this witness the facts alleged in paragraphs 15 and 22 of the complaint."

14. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection by the defendants and excluding the following offer of proof on the part of the plaintiffs, in connection with the strike in the Irwin field:

"Mr. Drinker: Now, if your Honor please, I am going to offer—I offer, from the United Mine Workers Journal, an article on page 1 of the issue of June 16, 1910. This relates, I will say, solely to the Irwin field, showing the authorization of the strike by the International organization."

(Which article, so offered in evidence, and excluded by the Court's ruling is in substance as follows, to wit:)

Hayes Pays Visit to Irwin Field

Greensburg, Pa.

The coal strikers in the Irwin field have received hearty encouragement from the international officials of the United Mine Warkers of America, who were here as an investigating commission.

'We have come into the Irwin field, and we expect to stay camped here until we have every man organized'—declared Frank J. Hayes. 'All we ask of you men is loyalty to yourselves and to the cause and we will do the rest,' said Mr. Hayes. These words bring the most cheering encouragement to those who have known little or nothing of industrial freedom.

Looked Over Situation

The investigating commission composed of Vice President Hayes and International Executive Board Members Thomas Haggarty, Geo. Dagger, T. J. Smith and Thomas Powell, returned to Indianapolis after spending a day among the miners of this field.

Vice President Hayes and Board Member Haggarty held enthusiastic meetings at Latrobe and Greensburg, while the other members of the commission with the assistance of District Vice President Van Bittner of Pittsburg conducted the meetings at Irwin and Madison.

In the course of his addresses at Latrobe and Greensburg Vice President Hayes said in part:

"We have come here from the highest governing body of the United Mine Workers of America to investigate the progress of the strike in the Irwin field so that we may be in a better position to render you such aid as may bring this warfare to a successful end. This strike has got to be won for we cannot afford to lose it.

I pledge to you my fellow workmen my hearty cooperation and sympathy, and that when I return to Indianapolis I will do everything in my power to bring aid and assistance to you struggling men. It is necessary that you make this strike a success if you want to have a taste of freedom in the future.

Under union conditions you cannot be robbed as you are now, and unionism means new life, new hopes, and blessing never before enjoyed."

15. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection by the defendants and in excluding the following offer of proof on the part of the plaintiffs, in connection with the strike in the Irwin field:

"Mr. Drinker: I offer from the United Mine Workers Journal and article on page 1 of the issue of July 7th, 1910, and an editorial

on page 4 referring to that article. Now this article is offered for the purpose of showing that the International organization, which published the Journal through its Executive Board, gave publicity to its membership—the constitution requiring that it be read by the local secretaries, that notices be read by the local secretaries,—gave the publicity to its membership of articles describing methods used in connection with strikes conducted by the national organization, which on their face are inconsistent with any attitude of law abiding, or inconsistent with anything but the use of violent methods. That is offered for the purpose of showing that for three years prior to the strike in Arkansas the United Mine Workers circulated to its membership information in articles which amounted to an instruction to the district members as to the methods approved by the national organization in strikes, which it admittedly conducted, for the purpose of showing an incitement of the organization to use similar methods in other strikes. * * * This will be followed by other articles bringing it right down to date * * * to show an approval by the National organization of the methods used in Arkansas in 1914."

(Which said Journal articles so offered in evidence, and excluded by the Court, are as follows, to wit:)

"Situation in the Irwin Field

(By Van Bittner, Vice President District 5, U. M. W. of A.)

This is the fifteenth week of the great strike that is being waged by the miners of Westmoreland County against the greedy corporations who, through through their tyranny, had established slavery in a worse form than it was in the South before the now historical Civil War.

It was the first week in March that the miners of this field decided to strike a blow for freedom for themselves and their families, and they are surely putting up a fight that would make any man proud that he is a member of the United Mine Workers of America. Yes, these men who are fighting under the most adverse conditions are displaying a spirit that is astonishing to their fellow trade unionists the country over.

With that saying of Patrick Henry "Give me liberty or give me death" as their watchword, these men are determined to fight and fight as only American workingmen know how to fight when they are oppressed by the slave driving employer.

These men are determined to go on and on until their efforts are crowned with victory, until they receive the wages — are given conditions of employment which the other union coal miners of this country enjoy. At no time since the inauguration of the strike have the men been so determined and at no time have they been so confident of success. They are going to continue the strike indefinitely, and they say that the fight has just begun. One of the many notable features of this strike is the fact that of the over twenty thousand

men that come on strike not one of them have returned to work, altho the companies have offered some good jobs and sums of money if they would only betray their fellow men and go to work. The coal operators are circulating stories thru their newspapers that they do not know why the men are out on strike. They set forth the claim that there were no grievances that they know of and that they treat their men better than their operators. But, my friends, go into Westmoreland County and see the awful condition and watch the miners prohibited from going to the United States post office to get their mail. This is the place where men, women, and children have to secure a pass from the guards before they are allowed to leave the place. They can't even go to church before they have secured one of these passes. They read, 'Allow Mike Kousic to go to church.' (Signed) Brown, Supt. What do you think of this in free America. This place is known as the Siberia of America.

The Jamison Coal Company evicted the miners from their homes and then went into court and secured an injunction preventing the United Mine Workers from furnishing tents for the evicted strikers to live in. These are the mines where Edward Soppett, a former organizer for the United Mine Workers is general superintendent. He was a failure as an organizer, but surely Soppett is a howling success as a slave driver.

Although the conditions are bad at Jamison, the same conditions prevail at many other places in Westmoreland County, where the coal companies have become so desperate as to drive men to work at the point of a gun.

The worst feature of the strike is the fact that nine of our people have been murdered by the companies' thugs and it looks as tho the court is giving these murderers special privileges. Among those killed were three women, wives of our striking miners, who were shot down like dogs by the drunken hirelings of the coal operators.

The operators are shipping men from Cleveland, New York and Chicago, where they have employment agencies established at these points. The men are deceived by the people who are in charge of the agencies, and when they find out the true state of affairs they refuse to work. Very few of these men are coal miners, most of them being tramps, and at best they are only a bill of expense to the companies. Of course, as in nearly every strike that workingmen are engaged in, the courts are being used as a mere cat's paw and do just what the operators ask them to do in order that the workers may be defeated. Every injunction that has been asked for by the coal operators has been granted by the courts, and these injunctions do everything but restrain a man from breathing, and we expect them to do this if they can devise a way of cutting off the fresh air from the strikers.

The policy of our organization has been that our people shall obey the law, but shall exercise all the rights guaranteed them under the Constitution of the United States. As a result of this policy, the injunctions have not interfered with the successful conducting of the strike. I believe this policy is the best that can be adopted dur-

ing a strike, for just as soon as the courts learn that their injunctions are not doing the work they were intended for they will stop issuing them. This policy will continue in Westmoreland County even tho one half the coal miners in that field are thrown into jail for contempt of court. It is better that they be in jail than that they be scared into doing something unlawful and wrong just because a judge tells them to do it.

There is no doubt but what the Manufacturers' Association is behind this fight in the Irwin field, and as a result the battle will be long drawn out and should receive the support of every organized workingman in Westmoreland County is becoming another Colorado. Women with babies on their arms are being thrown into jail, young girls are arrested and thrown into jail by the deputies simply because they are daughters of the strikers. The sheriff has issued orders to his men to shoot to kill, after a mixup that was caused by a drunken guard last week at Export. The sheriff sent out his deputies and gave them orders to arrest every person they saw upon the public highway, and as a result of this eleven women were arrested and taken to Greensburg and thrust into jail. The next morning they were all discharged and the company had to pay all costs.

These many things are simply causing the men to remain more firm than ever. It simply acts as a spur to cause them to go ahead. The coal companies have done their worst and they now realize that they are up against a fight that means better conditions for the coal miners. They may evict the miners from their homes, they may murder them as they have been doing, but when the smoke of battle is cleared away, slavery will be abolished and unionism will be established in Westmoreland County never to be stamped out."

(From the Editorial page:)

"A dearth of news from the Irwin field, except the communication from Vice President Van Bittner, leaves us unable to speak of the situation in that field, except the miners are still standing firm and determined to win."

16. The Circuit Court of Appeals erred in sustaining the action of the District Court in excluding the following article from the issue of the United Mine Workers Journal dated June 23, 1910:

"There is nothing new to report from the Irwin field in Pennsylvania, and the boys are hanging together in a tenacious manner and under adverse conditions. The mounted cossacks and the company thugs are earning their measly pittance protecting the rights—supposedly—of the corporations who hire them."

17. The Circuit Court of Appeals erred in sustaining the action of the District Court in excluding the following articles from the issue of the United Mine Workers' Journal dated June 30, 1910:

"The Irwin, Pa., field has also assumed a peaceful attitude. By this we mean the newspapers have quit sending out scareheads about

the violence done by the strikers most of such violence being done when they sat down to write about it and drawn from an inflamed and perverted imagination."

18. The Circuit Court of Appeals erred in sustaining the action of the District Court in excluding the following article from the issue of the United Mine Workers Journal, dated August 4, 1910:

"News from the Irwin Field

Finleyville, Pa., July 25, 1910.

Editor Mine Workers Journal:

"The issue of the 21st inst., was certainly full of good things, and any union coal miner who neglects to subscribe for and read the journal is, in my mind, a very poorly informed union man and his unionism is very shallow. Indeed, a union man who refuses or neglects to support the paper that represents his craft does not understand or appreciate the far reaching ideals and principles of the trade union.

I see a novel scheme has been introduced into the Irwin district to enlist the services of the clergy to do something for those true and loyal souls who are on strike there. They certainly need intelligent help and influence, and certain it is that there is a proper channel to pursue in order to reach the sympathy and reason of the preachers. These men have much influence, but will they be stirred to such a depth as to use it? We will wait and see. But a few words about the methods adopted in that strike. A deficit of over $1,600 for the last quarter placed against the Journal is a standing disgrace to the union men of America and they ought to blush for shame to be told that such a condition exists. There are a large number of men who call themselves union men because they are compelled to pay dues. That is where their unionism commences and ends. That is the sum total of their unionism, and if their dues were not checked off in the company office they would not pay them and their unionism would not make a shadow.

A prayer was read by Mr. F. Fehan at a mass meeting at Madison and is being read by other men at other places in the strike zone, I have this to say about praying: Your prayers may get you to Heaven—altho I doubt it sincerely—but they will never win the strike in the Irwin field. Your prayer was an appeal to the clergy. They have responded in 'prayin' but will it appeal to the coal barons, the tyrants, the persecutors, the oppressors, the murderers, and assassins? No, my friends, your prayer will not bring those lawless and brutal men to time or reason. There may be a time for prayer but some men of Irwin believe that that time is not now. That time is past and gone. The trouble is, the majority of you have prayed too often and too long, until that business is useless. Rather this is a time to fight, to deliver the hardest and swiftest blows possible, hit wherever you can, above the belt if you can, below the belt if you

must. By all means mix your 'prayin' with hard fighting and if you must neglect either stick to the fight. The miners over in Nova Scotia fought and struck for a year—and many hundreds of them are striking yet. They used all fair and lawful means to win, and hundreds of them have won, but it was not won by 'prayin,' but by sacrifice and fighting. But I don't blame the men for praying provided it will bring intelligent action to their aid. It must ever be remembered that God is on the side of the biggest and best drilled army, especially if they shoot straight and keep their powder dry, and, by the way we working folks are not so dumb and simple minded as we were taught we ought to be many years ago, as it was neither God nor the prayers of Godly people that won the wars of 1776 and 1865. Oh, no, it was numbers, bullets and shells, courage, sacrifice, shooting straight and often. Oh, yes, that's it boys, keep up enthusiasm, send plenty live agitators into the strike fields, hold meetings often, tax all miners working in Pennsylvania so much each pay day, keep the stomachs of the men, women and children from want and send cast off clothing into the field.

If the above is carried out to the letter I'll guarantee the strike will be won (prayer or no prayer) and instead of asking the Lord to forgive those notorious thugs, murderers, assassins and gun men, judges, sheriffs and other state and county authorities, I would if I did pray at all, ask the Lord to damn and exterminate such despotic tyrants from the face of the earth. However, I am not going to start praying for such purpose because praying is no good anyhow. That is all false, fake and ridiculous. And lastly, I do not ask God or anybody else to do for you that which you can do for yourself. Remember these judges and sheriffs are not Gods. They hold their position because of the dense ignorance of the workingmen of Westmoreland county. Use your ballot hereafter as you strike, turn out of office all rotten and unfair officials, whether they are judges or sheriffs. Put not the friends of the working class in office and legislature, but put labor and true sons of toil there. They have the education, intelligence and ability, so quit praying, fight hard and vote right, is the wish of yours."

19. The Circuit Court of Appeals erred in sustaining the action of the District Court in excluding the following article from the issue of the United Mine Workers Journal, dated August 11, 1910:

"Miner Shot Dead in Riot at Export

In a desperate hand to hand battle last night between the authorities and strike sympathizers at Export coal mines, near here, a striking miner was shot and killed and State policeman George Davis of Troop B, Wilkes-Barre, was seriously injured.

Nearly a score of others were injured and the situation is grave."

20. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection of the defendants

to the testimony of the witness Ballard S. Carney, relative to the strike in West Virginia, in 1912 and 1913.

21. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Ballard S. Carney:

"Were you a president of a local union of the United Mine Workers in that district at that time?"

22. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Ballard S. Carney:

"Did you personally conduct, on behalf of the striking miners, the campaign against the operators in your particular district?"

23. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Ballard S. Carney:

"Did you participate in the attacks on the coal operators as the leader of your local union and the surrounding locals in connection with that strike?"

24. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Ballard S. Carney:

"Did Mother Jones live in your house during that strike, after she was arrested?"

25. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Ballard S. Carney:

"Did you assist Mother Jones in circulating these reports of the atrocities practiced on her by the company thugs and gunmen at the time she was living in your house?"

26. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Ballard S. Carney:

"Did you know of the methods used by the United Mine Workers, did you know of your own personal knowledge, the methods used by the United Mine Workers during that strike to obtain publicity for their side of the case?"

27. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Ballard S. Carney:

"Did you, yourself, have part in the circulation of such publicity?"

28. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Ballard S. Carney:

"Did you take the articles to the Labor Argus?"

29. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Ballard S. Carney:

"What is the newspaper called the Labor Argus, and what part did it play in the propaganda conducted with that strike?"

30. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Ballard S. Carney:

"Mr. Carney, did you participate in efforts to prevent the non-union miners from working in the mines in Paint and Cabin Creeks at this time?"

31. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the objection by the defendants to the following offer of proof on the part of the plaintiffs, in connection with the witness, Ballard S. Carney:

"Mr. Drinker: I want to make an offer in connection with the testimony of this witness. I offer to prove by the testimony of this witness and other competent witnesses, that the facts disclosed by the testimony of the witness in answer to the question suggested would, on their face, be of such a nature as to result in the inevitable conclusion that the strike there conducted was part of a fixed purpose and set design, by agreed upon methods for the suppression by the United Mine Workers, in combination with all its districts and members and local unions, to prevent non-union coal from being shipped to other States in competition with that mined by union operators in those other States, for the purpose of increasing the cost of production in the non-union mines, and for the purpose of protecting the union operators and the relations between the mine workers and the union operators in such other States."

32. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the defendants' objection, and excluding the following offer of proof by the plaintiffs, in connection with the West Virginia strike:

"Now, if your Honor please, I offer from the United Mine Workers Journal the editorial contained in the issue of November 7, 1912, page 4, for the purpose of showing the West Virginia strike in 1912 and 1913 was authorized and conducted by the National organization."

Which said article, so offered in evidence, and excluded by the Court, is in words and figures as follows, to-wit:

"The men on strike deserve to win, are determined to win. The National organization is supporting them to the extent of its resources, the membership everywhere is backing up the officials.

What is the answer?

Victory."

33. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the defendants' objection, and excluding the following offer of proof by the plaintiffs, in connection with the West Virginia strike:

Mr. Drinker: I offer in evidence the following articles from the United Mine Workers Journal for the years 1912 and 1913 for the purpose of proving the facts sought to be proved by the questions to the witness just on the stand; and for the further purpose of proving that the strike in West Virginia in 1912 and 1913 was planned and conducted by the National organization of the United Mine Workers in conspiracy with the members of that organization and its district branches and local branches for the purpose of preventing the shipment in Interstate Commerce of coal mined in non-union and open shop mines in West Virginia and so that such coal might not come in competition with the coal mined by union operators in Ohio, Pennsylvania, Indiana and other States than West Virginia, for the purpose of increasing the cost of production of the West Virginia non-union or open shop operators, in order to interfere with such shipments; for the further purpose of showing a thoroughly conceived system of camouflaging the public as to the true purpose of such events, and in order to keep public opinion on the side of the mine workers; for the purpose of showing in connection with the testimony by the witness just on the stand a deliberate circulation by the United Mine Workers of description of events known to be false, circulated for the purpose of deceiving the public and the authorities in connection with those events; for the further purpose of showing, by the publication by United Mine Workers International Executive Boards of these known false statements, and a deliberate incitement to the District organizations thruout the country to stop, by all necessary methods, legal or illegal, the shipment of non-union or open shop coal in Interstate Commerce, wherever such was necessary to carry out the prime purposes of the organization to unionize every non-union mine in the country, regardless of methods or cost.

(Said articles from the Mine Workers Journal, so offered in evidence, and excluded by the Court's ruling, are, respectively, in words and figures as follows, to-wit):

(From the United Mine Workers Journal, issue of August 1, 1912, page 1:)

"Terror Reigns in West Virginia"

Charleston, W. Va., July 27.

Three companies of state militia from Mount Gretna, Pa., arrived by special train shortly before noon today and marched on the Paint Creek mining section, where a dozen men are reported to have been killed in fighting between Baldwin detectives and striking coal miners. No complete fatality returns were available today, but a mining official fresh from the scene of the trouble replied to questions.

"Hell has broken loose. We hope the soldiers will put a stop to it."

The official refused to discuss the situation further.

The private guards of the mining companies are believed to have instituted the bull pen and other repressive measures.

The known dead are William Stringer and Gus Pinson, private guards, William Phaup, chief of the Baldwin detectives, is at Sheltering Arms hospital with bullet wounds in both arms. He will recover. The miners' losses in yesterday's fighting around Mucklow are not known. Adjutant-General Elliott and twenty-five men of company C are encamped near Mucklow, but the territory is too big for them.

For a distance of twelve miles around the mouth of Paint Creek the center of one large company's operations, the inhabitants are said to have lapsed into a state of primitive savagery, spurred on by the depredations of the private guards. Frightful stories of attacks on defenseless women and raids on homes reached here. That more than two men were killed on both sides was considered certain by men who came out of the troubled region today. They said the backwoodsmen had joined with the strikers in the war upon the private guards. Every ravine affords ground for a deadly ambush. The militiamen unfamiliar with the ground and unaccustomed to the guerilla warfare of the backwoodsmen cannot hope to cope with the situation except in large numbers.

Six hundred miners and hillsmen fought against several hundred private guards in the engagement near Mucklow yesterday. Over 3,000 rounds were fired. The miners are desperate, and their attack centered on the company's stores. Their outcome of the fighting is not known in Charleston. Communication with the Paint Creek section is possibly only by foot, all wires being down. Travelers into the interior take their lives in their hands.

That the fighting was renewed today was considered certain. The frantic call for state troops made by the mine owners was interpreted here as meaning that the miners more than held their own in previous engagements, and that the lives and property of the company officials were threatened."

(From the United Mine Workers Journal, issue of August 8, 1912, page 1):

"Bloody War in West Virginia"

(G. H. Edmunds)

It has been quite a while since I wrote to the Journal about the strike in the Kanawha fields of West Virginia.

We have been so very busy that no time could be found for correspondence. At this writing the strike is in its most critical period. In my second letter to the Journal last May I pointed out the guard system and how it was being inaugurated in the Paint Creek zone. We also called the attention of the sheriff and the Governor to the dangers of tolerating the guard system in those fields. Now, no one will deny that we were correct in our deductions. Even the Governor has come around to our way of thinking. I have been away on business for the organization for 12 days, so I can only give such a report of the recent shooting on the creek as has come to me from the press and general public. What I can glean is that the miners, after an honest effort to avoid trouble, after vainly appealing to the sheriff of Kanawha county and to the Governor repeatedly, and repeatedly being refused protection from the armed guards, who were committing all manner of outrageous depredations against the strikers, their wives and children without the vestige of an excuse, also from unlawfully evicting the people from their homes; after appealing to the courts and judges running away to keep from hearing their cases; after being unable to get murderous guards to trial, and after every conceivable dirty trick had been played against the miners imaginable, they finally decided to protect themselves.

They seem to have adopted the tactics of the revolutionary fathers of American freedom. No details are known. The results are also in doubt. Suffice to say that a battle occurred on Paint Creek the 25th of July, 1912, long to be remembered by the guards of that creek. Some say 35 were killed, some say 18 were killed and 35 wounded. As stated in the outset, we do not know which is correct, but we do know that it was hell on Paint Creek that night and day.

The citizens have at last awakened to the actual condition on Paint Creek. When the miners were being assaulted and murdered by the guards, and when they appealed to the Governor for protection, he said he could do nothing for them; but just as soon as Guard Phopp was shot and Springer was killed the Governor sent the soldiers from the national encampment at Gretna, Pa., to the scene of the trouble on Paint Creek. (Puzzle: Why does the Governor protect the guards and won't protect miners?) Is that the doctrine of the boss bull mooser of West Virginia?

If so, please save us from the bull moose party in the beginning.

The soldiers are on the creek, but the guards are running things up that way at this writing. It seems that the soldiers are simply helping the guards; or, in other words, are standing guard over the guard system and are not controlling the situation, as it was thought they would do upon their arrival. The miners have no quarrel with

the militia, or the guards either if they (the guards) will mind their own affairs and not molest the strikers in their legal rights. But I will again predict that unless the guards behave themselves, they will have a hot time on Paint Creek. All of the miners in the Kanawha valley are aroused as never before over this strike, and if it has come to the place where they are driven to the rifle, they will certainly use it to perfection.

On the other hand, if the guards are removed I believe all trouble will cease. But the miners are not going to stand for their wives, children and officers being mistreated and even killed and then have no legal recourse. It has been proven in this strike that the workingman has no rights that any one need respect.

Take, for instance, Justice Crawford, who has been found guilty to assaulting a helpless woman and sentence has been passed on him, yet he is allowed to exercise the function of a justice of the peace in Kanawha county. He still tries and sentences the miners.

Cannot the county of Kanawha get along without Crawford? Or is there a law that allows a convicted official to exercise the functions of his office? If that is the case, then I say, shame on the State of West Virginia for having such a law upon its statute books. The Cincinnati Enquirer of the 31st of August had an article wherein the striking miners were accused of firing on the soldiers, but it is not true. If the soldiers were fired upon, it was not done by the miners; but we have every reason to believe that it was the guards who fired on the soldiers, and if the Governor will remove the guards (which he can do), there will be no more firing in that territory. Will the Governor do it? In the interest of the public peace, will he do it?

More than a thousand miners voluntarily came to Charleston to see his Honorable Excellency, the Governor, but they found that that worthy was away, supposedly at Huntington. Mother Jones and John Brown, who is a candidate for the Legislature on the Socialist ticket, addressed the mass-meeting of miners.

The today's Mail published an article that the sheriff had written a letter to the adjutant-general asking him to declare martial law in the strike zone.

Times are still hot up the creek.

(From the United Mine Workers Journal, issue of August 15, 1912, page 3:)

"3,000 More Go Out on Strike

Charlestown, W. Va., Aug. 10.—Still more serious became the strike situation in the Kanawha valley today when 3,000 coal miners employed in the non-union mines on Cabin Creek laid down their picks, making the total number of striking miners on the Kanawha coal fields above the 5,000 mark. In the Cabin Creek field, the miners walked out without making demands upon the coal operators, asserting that they would refuse to longer work under the conditions existing on that creek, but they are expected to insist

upon the employers' recognition of the union mine workers' organization, the same demand made by the striking miners on Paint Creek, and the removal of the mine guards. In addition to the general strike on Paint Creek, which has been in progress since last April, and the present condition of the strike to the mines on Cabin Creek, 1,400 miners are idle at Boomer, Fayette County, in close proximity to the strike scene. The miners at Boomer walked out Friday because of the refusal of the mine owners to meet their demands in connection with the semi-monthly pay day. The strike at Boomer is regarded as a local affair and it is asserted that the miners quit work in violation of their wage agreement with the mine owners.

Officials of the miners' organization have been insistent that the strikers return to work, but to the present time they have failed to heed the instruc-ions of their leaders. A meeting will be held at Boomer on Sunday and it is probable that the charter of the Boomer local will be revoked unless the men return to work.

While there has been no disturbance in the strike territory today following the strike of the Cabin Creek miners, the situation is the cause of much alarm. Every company of the state's national guards has been employed in the Paint Creek Valley to prevent a recurrence of the riots between the armed miners and the Baldwin guards employed by the coal companies, but if there is a clash on Cabin Creek the same forces, and it is deemed probable, the guardsmen will have to be divided. It is recognized by the militia officers that the miners on Cabin Creek are as well armed as are the miners in the Paint Creek section and they are just as bitter in condemning the guard system. Local stores reported the sale of many rifles to visiting miners today.

"Mother" Jones, one of the strike leaders, who initiated the strike movement on Cabin Creek, when she spoke to 800 miners at Eskdale on Thursday, stated today that the guards on Cabin Creek had assaulted a score of the miners since yesterday morning. She further said that the national organization of mine workers would be compelled to care for the 3,000 or 4,000 striking miners and their families from the Cabin Creek section. The mines on Cabin Creek have been operated on the open shop plan since 1904, when the miners' union in that fall was destroyed. Since that year no effort has been made to organize the miners on that creek, but the coal operators in the adjoining organized field have complained bitterly against being forced by the miners to compete in the markets with coal produced by the non-union labor on Cabin Creek.

The strike on Cabin Creek was a severe disappointment to Governor Glasscock, who had been making an effort to bring together the contending forces on Paint Creek. The action of the Cabin Creek miners further complicates a situation that appeared almost ready for solution.

"The two companies of the national guard which were stationed at Peytonia and Sterling, Boone County, where an agreement was reached between the miners and operators, were ordered home this

morning. But the order may be rescinded at any moment. These two companies were on duty for more than two weeks."

(From the United Mine Workers Journal, issue of October 24, 1912, page 1.)

"Standing Like a Stone Wall"

(By G. H. Edmunds)

Martial law was kept on until the coal operators evicted the strike leaders from their homes, and then it was declared off. The "Army" officers are very busy denying that the militia took part in the eviction of the strikers, but every one knows better. Tents have arrived from Cincinnati and a box car load of large, new tents are en route from Clearfield, Pa. The union has closed a deal with a lumber company for the quick delivery of several hundred thousand feet of lumber, and houses will be built to shelter the women and children, while the men live in tents.

Strenuous efforts are being made by the companies to fill their mines with scabs, but the union has been very successful in keeping the number down below the danger point, where there were 1,500 men working before the strike, there is less than three hundred working now.

The strikers are determined to win out if it takes ten years. We ask all mine workers and sympathizers to advise people to stay away from here. It is reported that the governor had pardoned the thirty-five men from Dorchy, who were sentenced to sixty days in jail for asking other men not to work in the mine while the strike was on.

No better example can be given of the soul of a coal baron than that of the case of Albert Woods, a colored miner who lived on Mr. Cable's works on Cabin Creek. His father-in-law, an old man, ninety-five years of age, forty-eight years of the ninety-five were spent as a slave to the Cable household. This old man was lying sick unto death. He depended upon his son-in-law for help and attention. Al Woods had to bathe the old man daily and administer to his wants. Mr. Cable tried to drive Woods back to the mines, and upon his refusal to go, he was out in the road, bag and baggage. His old father-in-law was left there to suffer and die which he did in a few days after, and after death Woods had to go to the governor before he was allowed to go to the funeral. Isn't it horrid to think of such things as this?

But the worst part of this sad story is the wife of Woods is expected to become a mother in a very short time. Such is the soul of a coal baron. Old man Issacs gave free gratis forty-eight years of his life to Mr. Cable, but yet he is not satisfied—he despoils the old man's daughter.

Yet this same man is the builder of Y. M. C. A.'s and a "Christian" man, and a rock-ribbed, died-in-the-wool Republican. Now, striking miners, don't budge an inch until after November 5. We must rid this county of these political parasites, so stick to your oars; we are bound to win because we are right."

(From the United Mine Workers Journal, issue of October 31, 1912, page 1.)

"The Guard System in Disguise—Militiamen to do Private Guard Duty

The strike of the miners is reaching its most critical state. So far every movement of the operators has proven a boomerang. The Baldwin guards pushed the miners beyond their power of endurance and forced them to rise in their might and put the guard system out of business in Kanawha County. When the Baldwin guards were no longer able to control the situation, the militia under the governor's "peace proclamation" were brought in to protect the Baldwin while they built forts and fortifications. When this method failed the governor declared martial law, and though biased and one-sided, it failed to break the ranks of the striking miners. Legalized anarchy and brutality has failed, military despotism has failed and now the powers that be realize that they must resort to other methods to accomplish their object. The military authorities abused their authority and evicted the miners from their homes, thinking by this method they would discourage the strikers and force them to go back into the mines, but their actions only added fuel to fire and fanned the already smouldering spark of revolt into a flame as unquenchable as death. The miners in this district will never submit to the brutalities of the guard system again, the tax payers of the state are tired of paying the state militia $5,000 a day to do guard duty for the coal barons. The military despotism supported by the tax payers, was becoming as unpopular and obnoxious as the guard system, so something else had to be done. General Elliott, the coal baron and the governor have again met in private consultation and hatched up another beautiful little scheme. Every move the governor has yet made was the result of one of these secret council meetings with the operators and their attorneys. The latest move to break the strike is to use the militia as private watchmen for the operators to be armed and organized under some of the militia officers. These so-called watchmen will be nothing more nor less than a Baldwin detective agency in disguise, as it will be composed of the renegade members of the militia who have stooped so low as to hire to the Baldwin strike-breaking agency. This simply means one more plot hatched in secret between the governor, the Baldwin, the county officials and the coal operators to break the present strike. Both the miners and the mine workers' organization should watch this latest move of the operators and their tools. The crisis has been reached and the militia in plain clothes is the last card the masters have to play, trump this play and the strike is won. The miners cannot expect soldiers in plain clothes under pay and instructions from the coal operators to be any fairer to their side of the controversy than were the Baldwin thugs, whose places they were taking. Free speech and the right of assemblage is promised, but the miners have learned

from past experience that the promises coming from such a source cannot be trusted. Such determination as has been displayed by the miners on Paint Creek and Cabin Creek will win the victory. The output of coal in the strike zone does not amount to the average run of one mine, the transportation men being brought in are green men and are costing the operators much more than they are making out of their work, and at this time it is impossible for the coal companies to find men enough to work their mines. What few men they are able to deceive into this section only work a few days before they become acquainted with the situation and leave. A move may be on foot, and we learn that it is, to bribe or buy some of the men to betray their fellow workers. A man who will betray his class in a fight like this is a foul traitor and should be dealt with without mercy. The miners have this strike won, all they have got to do is to stay with it, and we feel confident they are going to do that.—Labor Argus."

(From the United Mine Workers Journal issue of December 26, 1912, page 1, column 3.)

"Mother" Jones, who is the central figure in this struggle, has been holding meetings the past two weeks in New York, Cleveland and Cincinnati, and has a number of meetings billed after the holidays. She has just returned from Washington where she went in the interest of the miners. "Mother" Jones is never idle, always planning new methods to give publicity to the strike and telling the truth about conditions here. The operators fear the truth, and if they dared to chloroform this venerable, old fighter for human rights they would consider their position more secure. The operators have gone to the subservient governor and pleaded for him to deport "Mother" Jones, but for once the chief executive acknowledged a lack of power to serve the interests. The coal barons had better learn that it is dangerous to distort the truth through their prostituted press to make the public believe something that is not true. The truth is sometimes slow to assert itself, but sooner or later it will trumph."

(From the United Mine Workers Journal, issue of February 13, 1913, page 1.)

"Our Strike in West Virginia—Sixteen Killed in Mine Battle—Score are Injured—Strikers in West Virginia Fields Drive Back Company Guards, But Suffer Loss

Charleston, W. Va., Feb. 10.

Sixteen men are dead, including twelve miners and four guards, after a desperate battle in Kanawha county coal fields today. Twenty or more were injured.

Five companies of state militia reached the troubled zone tonight. One of the dead, James Hendrix, a striker, was found on the mountain top overlooking Ronda, W. Va., with a bullet through

his body. Hendrix held field glasses in his hand and a rifle was found by his side.

All trains of the Chesapeake & Ohio Railroad into the strike territory tonight are equipped with machine guns. The gun is screwed to the rear platform of a coach as a precaution against night attacks. It is manned at all times and ready for instant use.

With the presence of the militia, rioting has ceased. Rumors reached the militia late tonight that an attack would be made tomorrow and the militia prepared for it.

A critical condition exists. Exact details are not known in Charleston. However, it is hoped that with the coming of the militia disorders may stop.

Striking miners marching toward Mucklow were met in the mountains by a posse under Fred Lester, a former captain of the West Virginia National Guard, now in the employ of a coal company. A sharp engagement followed. A bookkeeper and two mine guards were shot dead and several others wounded. Lester and his men were slowly driven back, fighting all the while. Reinforcements from other mine companies, railroad police and deputy sheriffs, joined Lester's men, but with little success. The miners steadily advanced, pouring a hot fire into the ranks of the officers.

The fighting continued throughout the afternoon. The last telegraph wire into Mucklow, belonging to the Chesapeake & Ohio Railroad, was out yesterday and it was difficult to communicate with the strike district.

Guard Officer Hurt

The guards killed are William Radcliffe, James Vance and Bernard Crockett, Fred Bobbett, bookkeeper for the Paint Creek Collieries Company, reported killed today, is still alive tonight, but has little chance for recovery. Another of the wounded is Lieutenant R. L. Taylor of the National Guard, who had been investigating conditions in the strike district. Eight strikers were captured and brought here tonight, charged with rioting.

Another company of militia was ordered to proceed from Fayetteville for Mucklow. The militia is in charge of Adjutant-General Charles D. Elliott. The members of the military court which acted during the last two periods of martial law have departed for the scene."

(From the United Mine Workers Journal, issue of February 13, 1913, page 8.)

"Forcing Revolt

(By Frank Lodvinka)

Every day marks a new leaf in the history of the West Va. Miners' struggle, and in time to come the miners' strike in the Mountain State will mark the tragic pages in the great struggle between Capital and Labor. The world will then judge for itself, and pass the final

verdict, and there is no question of doubt that the West Va. coal barons will be branded as the greatest tyrants of humanity in the twentieth century.

Let us give the liberty loving public some proof of our assertion.

Friday, January 31, 1913, the guard bill was discussed before the Legislative committee. Mr. Knight, a famous corporation lawyer, and Mr. Sanders, a former Judge (in our opinion a very poor one) represented the privileged class. Mr. Houston and Belcher represented the wage slaves of W. Va. The arguments advanced by the representatives for the privileged class, simply made the guard systems in W. Va. imperative. Why? Let us analyze this question from past experience, from the workingmen's standpoint, and the answer will be this. The maintenance of the guard system is for the purpose of the operators to rule, ruin, exploit, and kill every spark of liberty. Actions of this character must be supported with Gatling and Winchester guns. The representatives for the Mine Workers logically convinced the members of the Legislature that the maintenance of guard system in W. Va. is for the sole purpose of preventing the Mine Workers from organizing and joining the United Mine Workers of America. This fact the two representatives of the privileged class did not deny.

We advised the W. Va. operators to study the world's history, and beware of repetition of history.

He who desires to rule or ruin and assume the position of Louis XVI will meet his fate.

In order to inform the general public that the action of the W. Va. operators must be supported by guards and machine guns, here is one illustration. On January 31, 1913, one car load of strike breakers was delivered at Cabin Creek with the following fortifications: Ten guards with weapons and two Gatling guns on each end of the car. Let us ask all the operators in the U. S. A. who recognize the Organization and do business with the same, 'Is this condition of affairs necessary for any employer who wants to treat his employees as human?' No! Only the W. Va. operators are forced to support their barbaric actions with machine guns, and disgrace the civilization of the 20th century.

Go on with your despotic actions, W. Va. Coal Barons! You will reap the full harvest of your sowing.

The organization of the United Mine Workers of America is a humanitarian institution. Whoever begins to fight the United Mine Workers of America will go down to unconditional defeat, as the motto of our organization is "One and Indissoluble."

Operators of W. Va. take notice.

Every Coal Baron who opened a fight against the United Mine Workers of America went down and out in bankruptcy.

Who is next? That is for the W. Va. Coal Barons to answer.

The strike on Cabin and Paint Creeks is in excellent condition, the striking miners are as determined as ever. Why should they be otherwise? Nearly one half million men stand behind them."

(From the United Mine Workers Journal, issue of February 20, 1913, page 4.)

Statement by Vice-President Hayes on West Virginia Situation

The members of the miners' union in the strike field of West Virginia are in no way responsible for the anarchistic conditions existing in that state at this time. The rioting was started by hired gun-men and guards for the purpose of influencing legislation against the miners and to secure the adoption of a bill providing a state constabulary and other vicious measures now pending in the West Virginia legislature. The authorities seem more concerned about protecting the dividends of the slave-driving corporations than they do about dealing out justice to the men who produce the wealth of West Virginia. Hired sluggers and gunmen, better known as guards, have been terrorizing the miners and their families in this region for years. They employ the same method to keep out the organization as the criminals in New York employed in carrying on their nefarious work, and some of the so-called 'leading familes' of West Virginia are contributing to these gunmen and sluggers for the purpose of keeping the miners of West Virginia in a state of absolute slavery. We have proof that many men are kept in the mines in the strike field under armed guard and are forced at the point of a gun to work in the mines; and moreover, several of these men who were imported to the strike field under misrepresentation have been shot and brutally assaulted in attempting to escape from their industrial taskmasters. We have many affidavits in our possession proving the correctness of this claim, and at this time we have a resolution in the U. S. Congress calling for a federal investigation of conditions in the mining fields of West Virginia, and when this investigation is made we will prove that miners have been murdered for protesting against their wrongs; that their wives and daughters have been brutally maltreated and assaulted; that peonage exists, and that the constitutional guarantees of free speech and free press do not exist in the non-union fields of West Virginia.

Our organization deplores violence as a method for adjustment of labor disputes, and we have at no time advised our people to violate the law, but it is common knowledge that the gun and the club are the chief factors non-union coal operators employed to keep the miners in a state of servitude. Such conditions sooner or later are bound to produce the anarchistic state of affairs we now see in West Virginia.

I am satisfied that Mother Jones and others who were arrested yesterday, charged with instigating the outbreak, had nothing to do with it, and that if it is possible for them to receive a fair trial they will be immediately released.

The miners on Paint and Cabin Creeks are striking for the right to belong to the organization, a right guaranteed by the law of the state; the right to have checkweighmen on all tipples to see that the miner receives correct weight for his coal, another right guaran-

teed by the law of the state. The miner also wants the right to spend his meager earnings where he pleases instead of being forced to spend it in the company store and pay two prices for the article he buys. He also wants a living wage and humane treatment, as well as the abolition of the guard system, and it goes without saying that there will never be industrial peace in the mining fields of West Virginia until these objects are attained. We will spend every cent in our international treasury, collect a million dollars or more by assessment and tie up every non-union mine in the country, if need be, in order to redress the wrongs of the West Virginia miners, and in saying this I express, not only my own view, but the view of President White and our entire Executive Board."

(From the United Mine Workers Journal, issue of February 20, 1913, page 7:)

"Rumors of War from West Virginia

"The press has been full of scare headlines of new outbreaks, rioting and other unlawful acts judging from these reports there must be a crisis coming. No doubt there is, judging from what we know of West Virginia. The reports, however, are not at all authentic. We have in the past three months seen reports similar to these, about the outbreak of the men on strike, how they had shot and murdered men, women and children, shot up trains and resorted to all unlawful acts known, and when a careful investigation was made into these rumors they had proven to be false and intended to influence the public against the striking miners, and where shooting has taken place it has been proven on numerous occasions to have been the paid emissaries of the coal companies who have done the shooting, and so these late reports are not to be taken seriously; in fact, we are inclined to think they have been at their old game.

The men are determined to win this fight and are not taking any chances of resorting to any unlawfulness. We believe the miners in the Paint and Cabin Creek district of West Virginia are as fine a lot of men and law abiding citizens as can be found in any of the coal camps of this country. Many of them are born and raised in these camps and have become used to the brutalities of the coal operators and it is this that has been the main cause that their patience has not been exhausted before this. The operators have again made their appeal to the governor of the state for troops, but so far as we are able to learn none have been furnished as yet. The new sheriff of Kanawha County of West Virginia, where the struggle is waged, is working with the operators even to the extent of inducing men to go to the strike fields to scab, to take the bread from the mouths of hungry babes. Think of it! You who elected this man to preserve order in this county, and it is just such officers as these that are to blame for such conditions. How can such officers inspire confidence when he is openly allied with the forces that own and control West Virginia. "Protect property" is the cry; never

mind the starving men, women and children, and bear in mind the word "starving." It is not used to express the condition that exists now, because there has been less starving among these families this winter than in previous years. This has been proven beyond the shadow of a doubt, and this is why the West Virginia miners will win.

Oh, my friends and brothers of the mighty army of the working class. I've seen this struggle as it is in reality the past three months. It is not a vision. Often when mingling with these strikers have I thought of and pictured in my mind what has been so ably expressed by our friend and comrade, G. H. Lockwood, that I cannot refrain from quoting from the "Billy Goat." It applies to West Virginia in the past and present. What shall the future be,

But this moving picture show is not the real thing—it is but a sham as it is all a sham—under the surface is the real purpose of it all, the protection, not of flag, country, or honor, but of the private property of the master class; the continuing of the system of exploitation that has reduced the working people to poverty and misery and made life one long-drawn out agony.

Across my brain there comes a vision—no sham battle this! Here on the one hand are my brethren, the toilers in the mills, mines, factories and workshops, the producers of wealth. Their faces are pinched, their forms are bended with toil, their brains are dwarfed, they have had no chance, they have been beasts of burden. And with them are their wives and their children, who are also toilers, and whose forms are also bent and crippled, many without fingers on their hands and many with legs and arms missing; all with misery and degradation stamped on their features, even to the babes in their mothers' arms. And I hear a cry, a heart cry; it is low and agonized at first, but it keeps swelling and swelling until it becomes a mighty voice of protest. The worms have turned. The beasts of burden ask for justice. They ask for the right to possess what their own hands have created.

I see the masters in their beautiful mansions, built by the toilers' hands. I see them arrayed in fine linen and gold. I see them sitting at their tables loaded down with the choicest foods and wines; I see them corpulent, conceited, heartless, relentless and drunken with their own success, as they call it; I see their faces blanch—the voices of the toilers has penetrated their seclusion at last; I see them in hasty conference; I see their eyes flashing angrily, their lips curling, their hands working convulsively; I see them go to the phone and call for the 'governor.' I hear the conversation—they demand protection—and they get it. I see again the boys of the moving picture show. This time they have forty rounds of ammunition in their belts, and no blank cartridges. The situation is critical. The command has been given, 'Shoot to kill.'

Do you want the rest of this vision? It is not necessary. You will see it all some day, but it will be no vision; it will be an awful, horrible reality—that is, you will unless you get sensible pretty soon and join the great peaceable army of revolt, that is standing for a

change of the economic system from the competition and trust rule to the co-operative commonwealth. Call me "dreamer," will you?

Bah! Your brains are ossified if this vision does not penetrate them.

Talk about "dreamers"—the people sleep; sleep on the brink of a volcano! Sleep while all hell is getting ready to break loose. Sleep, Sleep! They even snore and talk in their sleep, and they assure each other that 'all is well' in their sleep.

But all is not well; graft rules supreme; the power of greed sows to the wind; the storm clouds gather, and the handwriting is on the wall.

"Ill fares the land to hast'ning ills a prey, Where wealth accumulates and men decay."

Oh, ye members of the army of toil! Arouse! before it is too late, and once again this old earth be bathed in seas of blood, your blood, for it is ever the blood of the workers that is offered upon the alter of war. This applies to industrial wars as well—the kind of war that is now being waged in West Virginia. In the final analysis it will be hard for the master class of West Virginia to shift the responsibility.

This article is being prepared while en route to West Virginia, February 10. Next week we will have definite information of the situation as reported by the Associated Press the past week.

With all good wishes, I remain,

Fraternally yours, Paul J. Paulsen."

(From the United Mine Workers Journal, issue of January 2, 1913, page 1:)

"Mother Jones made a visit to Eskdale on Saturday, December 21, and held a large and enthusiastic meeting, and on the 22nd in the afternoon, at Holly Grove, gave the miners some good advice. It was interesting to note how these oppressed miners worship this venerable old fighter. They have confidence in her and believe that their cause is safe in her hands. They have been betrayed so often by the professed friends of labor that they hardly know whom to trust, but in "Mother" Jones they recognize the soul of loyalty and fidelity, a loyalty that has been tried on numberless industrial battlefields. We have never attended any meeting where such intense interest was shown. "Mother" Jones is in deadly earnest. She took them to task, for some of them have shown such intense fear of the penitentiary."

(United Mine Workers Journal, February 27, 1913, Page 1:)

Arrest of Mother Jones

(By Eugene V. Debs)

The arrest of Mother Jones at the instance of the mine owners of West Virginia for inciting to riot and complicity in murder, as an-

nounced in the press dispatches, adds another plume to the crown of that lion-hearted old warrier of the labor movement.

The charge against Mother Jones, Paulsen and the rest of the organizers is as false as it is malicious and trumped up for no other purpose than to defeat the efforts they were making with such signal success recently to organize the coal diggers who have for so many years been under the iron heel of the brutal boss.

The truth is that civil war has been raging in West Virginia during the past six months. The corporations not only control the State—they are the State. Their command is the supreme law. The Governor is their handy man. When the coal barons whistle the constitution is suspended and martial law prevails. The supreme lackeys on the bench promptly give their judicial sanction. The state militia is the private standing army of the labor-crushing corportations, and the soldiers move like jumping-jacks at their command. They also have a standing army of strike-breakers, called guards, consisting of seasoned thugs and high-grade assassins, and these mercenary hirelings have prodded pregnant women with their bayonets and knocked down little children with the butts of their guns in their brutal attempts to force the striking miners back into the black holes of West Virginia at wages insufficient to feed so many dogs.

The newspapers and the churches are on the side of the corporations, else they would be driven out of the State. During the last few months Mother Jones has made her organizing headquarters at Charleston and directed the work from there. Vice-President Frank Hayes of the United Mine Workers, Organizers Paulsen, Batley, Haggerty and others have been actively at work in the same field, and in spite of every obstacle thrown in their way by the bosses, they have succeeded in getting the miners lined up for action, and this is the reason Mother Jones and the organizers have been arrested and charged with murder.

The coal pirates of West Virginia are fighting desperately to prevent feudalism and peonage from being broken up in that state.

The day they had Mother Jones arrested they were caught red-handed buying up the Legislature like a drove of hogs. They have robbed the miners, debauched the courts, cashed in the legislature, established a military despotism to maintain their black holes of industrial slavery and brought eternal shame and disgrace upon the State.

The time has come to call a halt to these corporation slave-drivers and all the resources at the command of the Socialist party and the labor movement should be put behind Mother Jones and the striking miners, and the fight pushed all along the line until these black holes are unionized and the infamous rule of the robbers has been forever broken in West Virginia.

(United Mine Workers Journal, March 13, 1923, page 1:)

Our Strike in West Virginia

Mother Jones, Editor Boswell, and Others Refuse to Enter Plea to Charge of Inciting Riot

Charleston, W. Va., March 8.

"When Bonner Hill, sheriff of Kanawha county, bearing the processes from the circuit court against the military commission appointed to try "Mother" Jones and others, stepped from train No. 14 at Pratt, Friday morning, he was met by a military guard which conducted him at once to Provost Marshal John Bond, who admonished Sheriff Hill to make no effort to serve the processes he had brought from the circuit court, and as a result he spent a fruitless day in the military zone.

Sheriff Hill was not the only passenger who alighted from the Chesapeake and Ohio train at Pratt Friday morning. There were a number of Charleston citizens and newspaper men who went to Pratt to see the military commission which had ignored the order of the circuit court of Kanawha county. Members of the commission claimed that the order had not been served and under the law could not be in the territory in which they were sitting, and when the hour came for the beginning of the trial of "Mother" Jones, Paul J. Paulsen, Charles J. Batley, John W. Brown and Charles H. Boswell, charged with conspiracy and inciting a riot, the commission announced its readiness to proceed.

John W. Brown, the Socialist leader, and Charles Boswell, the Socialist editor, asked permission to address the commission, and asserted that they had no plea to make or defense to offer.

"Mother" Jones also asked permission to make a statement, and declared:

Will Do It Again

'I have no plea to offer. Whatever I have done in West Virginia I have done over the entire country, and will do again when I get out.'

G. F. Parsons, asserting that he spoke for the 'bunch,' declared: 'We refuse to make any defense whatever.'

Charles Batley, while asserting that he had all the respect in the world for the Court, had no defense to offer.

Paulsen attempted to make a statement, but when interrupted said it was immaterial."

34. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the defendants' objection, and excluding the following offer of proof by the plaintiffs, in connection with the strike in Vancouver:

"Mr. Drinker: We offer from the United Mine Workers Journal of the years 1913-1914, the following articles relating to the strike in Vancouver. These are offered for the same purpose."

(Which said articles so offered in evidence and excluded by the Court, are respectively in the words and figures following, to wit:)

From the United Mine Workers Journal, issue of October 30, 1913, page 7:

Thirty Miners Sentenced

Vancouver, B. C., Oct. 23.

Sentences ranging from two years' imprisonment to three months' imprisonment and $50 fine were pronounced today on more than thirty men, members of the Miners' Union of Nanaimo, B. C., and sympathizers found guilty of rioting in connection with recent labor disturbances at Ladysmith Extension South Wellington and Nanaimo.

The men are: Paul Deconininck, Suel Guthrie, John Morgan, William Simpson, Jr., and J. J. Taylor two years in the penitentiary to date from the time of their arrest, John Alsopp, J. H. Armstrong, Chas. Axelson, William Bauld, George Bombera, Sam Brightman, James Colley, Robert Cossar, Peter Galuska, H. H. Langdon, Duncan McKenzie, John McKenzie, Joseph Mairs, Jr., James Marshall, Charles Mortimer, Steve Mrus, Steve Puyanch, George Porteray, William Stackhouse, Martin Slogar, Jas. Wallace, Robert Walkinshaw, and Charles Yoga, one year imprisonment with a fine of $100.00 and in default four months more to date from time of arrest, Henry Dyer, John Fisher, Earnest James, Alvar Kotila, Richard Morgan, Sr., William Patterson, William Sterling, John Scott, Henry Taylor, Richard Whisker, and Edward Williams, three months' imprisonment and $50, in default of which two more months to date from time of arrest.

It seems to be the consensus of opinion that the penalties imposed are unwarranted by the offense, unprecedented in severity, and are the height of judicial viciousness."

(From United Mine Workers Journal, January 8, 1914, page 1:)

Our Strike in British Columbia—Our Brothers Are Standing Firm

(By Geo. Pettigrew)

Vancouver Island, Dec. 29.

The situation on the island remains unchanged in the various camps. In Cumberland the Chinese employed are practically the only men the company can depend on. The few whites they have are not satisfactory to them, this being proved by them working a few days and then leaving. In Nanaimo the company has made an attempt to scab the miners but are doing nothing. A convention of the district was held last week, when over forty delegates were in attendance. The situation was reported on from all the delegates, looking at it from its darkest and brightest sides, and also to devise some ways and means for a satisfactory settlement. At the conclu-

sion many important resolutions were passed and it is hoped may have some effect on the strike. The delegates ended their deliberations convinced that the situation looked as good now as at any time during the strike and expressed their sorrow that our brothers on the other side had heeded to send financial support for so long a time, but are firmly convinced that if the United Mine Workers stand behind them for a short time longer they will without doubt end the fight with an agreement equally as satisfactory as that signed up with the Vancouver Nanaimo Coal Company. There is at present more division among the coal companies than the men.

Less than 100 men have left the ranks of the union during the whole period of the strike, which to the rank and file of the members of the U. M. W. of A. should show the splendid fighting spirit of the men and women here.

The trials of the men imprisoned are progressing slowly and three weeks ago Ladysmith had 14 men tried by jury and ended in the acquittal of three and conviction of 11 in unlawful assembly and riot. The South Wellington trials ended in 3 convictions and seven acquittals. Even tho these men have been found guilty they are being held without sentence. Two days ago application was made for bail for the few men who had laid so long without trial and ended in all but two getting out on bail from $5,000 to $10,000, with the exception of brother Aryelo and another, and the reason given for refusal was that they were American citizens, with their families on the other side. However, a statement was made that their trials would begin when the court opened after holidays.

When the readers of the Journal know our men have had to lie in prison for three, four, and five months and then end in no conviction and that the coal companies can have the full support of the Government in having the camps filled with the scum of America in the form of special police and militia, some of these men having already been convicted of charges giving them six months imprisonment, and all the assistance they have cannot let them scab the miner successfully. We are convinced that the end is near and satisfactory at that.

(From United Mine Workers Journal, January 22, 1914, page 3, column 2:)

Vancouver Strike

The failure of the coal operators on Vancouver Island to in any way treat with the United Mine Workers and their hostile attitude toward the establishment of the union there have led to a very serious industrial conflict in which all the mine workers on the island are involved, and which has required the expenditures of a vast sum of money.

To all intents and purposes the operators have been aided materially by the Government of the Dominion of Canada in their fight against the United Mine Workers.

The powerful interests there have resolved to prevent the estab-

lishment of our Union and have endeavored to operate their mines with non-union labor without success.

A number of our men were arrested and sentenced to long terms in prison without any recourse from these arbitrary tribunals. I am reliably informed by those in charges there that it is the worst form of persecuton, with no semblance of justice whatever, but the men are remaining loyal to the organization.

International Board Member Farrington has had charge of the strike and has done everything in his power to bring about a conference, but at the time of compiling this report his efforts in this direction have been without results.

(United Mine Workers Journal, March 26, 1914, page 1, column 6:)

U. M. W. Origanizer Sentenced

Vancouver, B. C., March 2.

Joseph Angelo, International Organizer for the United Mine Workers of America was sentenced today to four years imprisonment for his part in the Nanaimo coal strike riots of last August."

(From United Mine Workers Journal, April 9, 1914, page 1, column 4:)

Vancouver Island Strikers Stand Firm Though Persecuted

Victory in Sight

The court cases arising from the so-called rioting during the third week of August last year are now finished. At that time over 200 men were put in prison. The men were all remitted from the lower to the higher courts and in the earlier stages were advised to take a speedy rather than a jury trial. The first group of men to be tried were from Ladysmith and had been led to believe that some understanding existed between the crown and defense lawyers and were advised on this understanding to plead guilty, expecting the time they had served would serve as punishment. However, on the day they came up for sentence, some got two years, some sixteen months and others eight months.

When this was found out the defense lawyers demanded a jury trial and again the men had to lie in prison awaiting all the red tape necessary for the change, bail in the meantime being denied They lay for three months before getting bail, and then only through the agitation going — the country.

When the jury trials came, first they were tried in groups, thus allowing the defense lawyers more challenges as to jurors and giving a chance to select a fair minded jury. The first few cases tried in groups were acquitted on the ground that there was not sufficient evidence to convict. The crown lawyers then decided to change the method of trial and bring each individual before the court, this change gave the defense lawyers only four challenges as to the jurors.

The result was that the crown always had a jury to be depended upon. In each case, after this method was adopted, a conviction was made and in the meantime the men found guilty had to lie without sentence.

The government evidently found the trials too long and expensive and two weeks ago made a proposition that if the remainder of the 52 men would plead guilty to a charge of ulawful assembly they would drop all other charges completely and give an understanding to recommend to the court leniency for the men awaiting sentence. The men were at first afraid of this, remembering what happened in the beginning.

However, in the end they decided to adopt this course, and as a result over seventy were either allowed to go free or given suspended sentences. However, I am sorry to say that nine of our Nanaimo men got one year in jail, two six months, and Brother Angelo from Bridgeport, Ohio, he is employed by the organization as national organizer, and who has done good work among his own (Italian speaking) people, got a sentence of four years. It is well known to the men on the island, and they desire the men in the organization to know, that this sentence was not given for any property damaged but because he was a leader in the strike.

We here, are not sorry all those cases are over, as it has be-n an anxious time for all the men concerned and their relatives, and during the trying period one young man from Ladysmith who got a one year term died in prison under painful circumstances, another is lying in the hospital in a dying condition, and more than one child has either been still born or had premature deaths from the strain of conditions and many more have been ruined for life.

The Government of British Columbia have much to face in the future which they cannot bear, this when a spirit of fair play and decency in the beginning could have prevented the strike and all its consequences. From appearances now it looks like as if the government is tired of more than the trial cases, they are also tired of the strike. The situation looks as good if not better than it ever did and the determination of the men on the island, together with the many persecutions they have had and successfully borne have proved that the United Mine Workers have come to stay forever. The men here realize the splendid efforts their brothers on the American side have made to keep them in food during their struggle and are convinced they in turn will show this same spirit when this fight is won, as "win" is the undoubted end of this struggle, and this struggle means the establishment of the organization on the Canadian side.

Geo. Pettigrew."

35. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the defendants' objection, and excluding the following offer of proof by the plaintiffs, in connection with the Colorado strike:

"Mr. Drinker: I further offer from the United Mine Workers Journal the article in the issue of the Eleventh of September, 1913, page 1, by Vice-President Hayes of the International Organization, for the purpose of showing that the Colorado strike in 1913 and 1914, was organized and conducted by the National organization in conspiracy with District 15 of Colorado, of the United Mine Workers, and the other districts of the United Mine Workers."

(Which said article, so offered in evidence and excluded by the Court, is in words and figures, as follows, to wit:)

"Colorado Now"

(By Frank J. Hayes)

We are making splendid progress in Colorado. We feel confident a new star will be added to our banner before many more days. District 15, embracing the States of Colorado, New Mexico and Utah, is the only district west of the Mississippi river that is yet unorganized. It is commonly known as the 'West Virginia of the West,' and the same despicable tactics are being employed here in keeping the men in subjection that were used in that State. Armed guards, and the so-called detectives are very much in evidence, and many are the outrages they have committed in their futile efforts to keep out our union.

Despite all their efforts, however, our movement grows stronger each day. The miners of northern Colorado, who have been on strike for more than forty-one months, are still standing loyally by the organization and are more determined than ever to defeat the efforts of the operators to make this a non-union State. Our campaign in southern Colorado, where about three-fourths of the coal miners of this State are located, will have a decided influence on the strike in the north, and I believe, will mean the complete organization of every mine in the State and the establishment of a wage agreement with our union.

Our success in southern Colorado also means the unionization of all the mines in Utah and New Mexico. This is why our campaign to unionize southern Colorado is of such vital importance at this time. We have established branch offices of our union at Trinidad, Walsenberg, Florence, Aguilar and Raton, each of these places being the center of large coal fields, and due to this division of our field forces we are able to reach all the men in the district on short notice. I have been trying for almost two months to get the operators of this district to meet us in joint conference for the purpose of discussing and adjusting all points at issue. They have not as yet replied to our invitation to meet us in conference, either being unwilling or afraid to make their position known at this time, and as a result of dilatory tactics they are being judged rather harshly by the public, which, in the finality, will wield a tremendous influence on this situation. We have proceeded with

our campaign here slowly, but surely, diligently and systematically, until today we have the situation so well in hand that we feel we can strike this entire district, if necessary, on twenty-four hours' notice. We are at this time sending out another invitation to the operators asking them to meet with us in joint convention at Trinidad, Colo., next Monday, Sept. 15, and in the event of their failure to attend this convention, it is very probable that the miners' delegates there assembled will frame their demands and send out a strike order to all the miners in the District. I feel sure I express the sentiment of every miner in the West, when I say 'Colorado, now or never.' "

36. The Circuit Court of Appeals erred in not reversing the action of the District Court in sustaining the defendants' objection, and excluding the following offer of proof by the plaintiffs, in connection with the Colorado strike:

"Mr. Drinker: I offer the following articles, one by one, from the United Mine Workers Journal, during the years 1913 and 1914. * * *

Relating to the strike conducted in Colorado during that period, for all the purposes specified in connection with the offer of the Journal articles in connection with the West Virginia strike, to go in as if I said it all over again. * * *

I offer these articles for all the purposes specified in connection with the offer of the Journal articles in connection with the West Virginia strike, and for the following additional purposes: To show that the strike conducted in Colorado during that period was in conspiracy of the purpose to protect districts 21, 14, and 25, and the union operators located in such districts from the competition of the non-union or open shop coal mined by Colorado operators at a cost lower than that mined by the union operators in the south; and for the purpose of showing that the Colorado campaign in question, as described in those articles, was part of the general conspiracy referred to; further, to show that in connection with the conduct of the strike in Colorado, the methods they used were so similar on their face as to show that they were part of a common design, with the conduct of the strike in Arkansas, including such matters as the wearing of handkerchiefs around the arms of the strikers, and so forth."

(Which said articles, so offered in evidence and excluded by the Court, are respectively in the words and figures as follows, to wit:)

(From the United Mine Workers Journal, issue of January 25, 1912, page 1, column 1:)

"Tellers' Report

Indianapolis, Ind., Jan. 18, 1912.

Delegates to American Federation of Labor

Adolph Germer ..... 33215."

(From the United Mine Workers Journal, issue of September 11, 1913, page 1:)

"The Colorado Miners Are Satisfied Now (?)

(By Adolph Germer)

Walserberg, Colo., Sept. 4.

A call, signed by International Vice-President Hayes, International Executive Board Member Lawson, President McLennan of District 12 and Secretary-Treasurer Doyle of District 15, has been sent to every operator in the State asking them to participate in a joint meeting. We want a settlement of the miners' grievances without a strike. Whether the operators want a settlement without a strike remains to be seen. If they do not and a strike results, which will be the case if they continue their arbitrary attitude, the responsibility for all that follows will rest with them. We have delayed and postponed independent action in the constant hope that they might yet come to their senses and meet with us as the mine owners do in other states. We have about reached a place where decisive action must and will be taken. The Colorado miners are anxious to respond to the call to action. The opportunity to gain a signal victory was never better. The agents of the operators tell the miners that we are only bluffing; that we have no intention of calling them on strike and support them in a fight; that our only reason for calling those meetings is to excite them and get their money.

The foolish fools that these intelligent agents of the mine owners are. Has West Virginia been no lesson to them?

They shall see that we mean business and that we will prove true to the trust the miners repose in us."

(From the United Mine Workers Journal, issue of November 6, 1913, pages 1 and 2:)

"Latest News

(Special to the Journal)

Denver, Colo., Nov. 3.

Denver business men today, under auspices of the Commercial Club, demanded Governor Ammons to take immediate steps toward

early resumption of mining coal. Coal in Denver is sold at $7.50 a ton. All the factories are paralyzed, and there is much suffering among the poor people.

The operators attempt importation of strike breakers by hiring them for the Pueblo steel plant, and then taking them to the mines. A gang of them was escorted by guards to Walsenburg, and was met by a crowd of strikers. A battle ensued and several strikers were wounded. Governor Ammons states that the importation is contrary to his orders and that the militia must prevent it.

At a monster meeting held in Cannon City, public sentiment is pronounced in favor of the miners. Public meetings are being held all over the State, demanding prompt settlement.

Strikers and soldiers played ball at Ludlow Sunday.

Ed. Wallace."

(From the United Mine Workers Journal, issue of November 13, 1913, pages 1 and 4:)

"Our Strike in Colorado—The Latest News

Trinidad, Colo., Nov. 10.

Four guards were killed in a battle outside of Laveta. A drunken top boss incited trouble, then called guards to rescue him. Five armed guards in an automobile menaced miners with Winchesters outside of town and engaged in battle with five strikers. Four killed. Top boss wounded. Strikers unhurt.

Vice-President Hayes addressed monster crowds at Boulder and Trinidad. The audiences were composed mostly of business men, farmers, and outside workers, who are very sympathetic with the miners' cause.

Guards join militia in committing many depredations. They search miners' houses and tents, ostensibly for weapons, steal money and watches. Suspected, they joined the militia with intent to create friction between soldiers and strikers. Governor and General Chase notified.

Ed. Wallace."

"The number of rifles that miners were in possession of and have hidden out since the coming of the militia is proving constantly like fat 'Sir John Falstaff's men in buckram,' and probably for the same reason."

(From the United Mine Workers Journal, issue of December 4, 1913, page 4:)

"Militarism Rampant

As usual, the promises made by those responsible for sending the militia into the strike field of southern Colorado were insincere, were never intended to be redeemed.

"The miners, though doubtful of the promises of the officers to give a square deal to all, realized that it would be difficult for the

military to act any worse than the sheriffs of the two counties, who had practically surrendered their offices to the important gunmen of the operators. But not for long were we allowed to deceive ourselves with hope of fair treatment from the soldiers of the State. Possibly many of the rank and file were in sympathy with the striking miners, but the officers, especially the officer in command, General Chase, were not long in showing beyond doubt that they considered it the duty of the militia to force the miners to return to their slavery in the mines, without the protection of a union for which they were contending.

General Chase served under Sherman Bell during the Peabody regime, and soon indicated the fact that he was capable not only of duplicating the tyrannous actions of that infamous blackguard, but could be induced to go further than Bell ever dared go, in his anxiety to serve the interests.

The good will that was evident between the miners and privates of the militia did not fit in with his plans and coercion. To destroy that he began to enlist the companies' hired thugs, and with these in the ranks, the conduct of the militia soon ended that era of good feeling.

Ostensibly hunting for arms, they ransacked the houses of the strikers, stealing money and any portable valuables they could lay hands upon.

The killing of G. W. Belcher, one of the guards who had made himself hated by his career of murder in many States, gave him the excuse he had been anticipating, to place the military above civil authorities.

By whose order this man was taken off we do not know. The man Zancanelli, who is alleged to have confessed, has been kept 'incommunicade.' No one has been allowed to speak to him except one Broughton, another relic of the Peabody regime; a known creature of of the operators who has set himself up as prosecutor and persecutor. Part of his, Zancanelli's alleged confession is disproven by the unsolicited testimony of a newspaper correspondent, who was at union headquarters and in communication with accused union officials at the time the plat was alleged to be made.

The military court in West Virginia has met with such universal condemnation from every source, it was never anticipated any one would ever gain attempt to establish one while civil courts were accessible and able to perform their functions.

The actions of General Chase can only be explained by the charges made by many, even before he was sent into the strike field, that the boasted five millions of dollars the operators said they would use to defeat the objects of the strike were in part at his disposition; would be used to hold up his hands while he robbed the citizens of the state of their every constitutional right; set the rule of force above the rule of right.

As we have said in previous articles, illegal force must be opposed. We appeal to the government of the United States for redress; for justice.

And if it be refused there we must appeal to the only tribunal that is left to us.

We will not give up the rights our fathers fought for at the behest of any prostituted official, civil or military.

On the heads of those who force this issue on people who would prefer peace be the results of their tyrannical, illegal acts."

(From the United Mine Workers Journal, issue of January 8, 1914, page 4:)

"Law and Order

The citizens' alliance has made its appearance under the name of the Routt County Taxpayers' League. A mob of citizens in Steamboat Springs, Colo., entered a court room where striking coal miners were having a hearing and stopped it. The sheriff was forcibly taken from the court room and Frank Garier, J. L. Ferguson and John Steinhart were notified that they had twenty-four hours to leave the county. They then went to the jail, made the jailer open the door and released four men who were awaiting the outcome of the hearing.

To complete the farce which has resulted in the sending of troops to Routt County, the citizens' alliance declared that they would go to Oak Creek and force the 300 striking coal miners to leave the county. This gave Governor Ammons his long-wanted excuse to call out the State militia to protect his own large interests in that county and those of the coal operators. It is said that the militia has been sent there to disarm the miners and deport them, but that will not be known until the soldiers are in the field. In the meantime the union has ordered all men to stand for their rights as American citizens and to shoot to kill if anyone other than a regular peace officer molests them."

(From the United Mine Workers Journal, issue of January 22, 1914, page 6:)

"From Colorado.—Will Fight to the Death

Florence, Colo., Jan. 16.

The mass meeting of the Fremont county miners, held at Rockvale, Colo., January 15, was one of the largest meetings that has been held in the county for some time and shows that the boys are going to fight to a finish. We had a large parade led by the Coal Creek and Rockvale bands. There were between 12 and 15 hundred men in the meeting which showed that there will be no compromise as some self-styled committee of men in Fremont county would try and make people believe, as the miners of Fremont County will not go back to work unless we get full recognition of the union, and, if necessary, we will sell our lives dearly to win this great battle and will never go back until we get full justice. Everything is going along fine and the men are in the best of spirits.

There is no production of coal to amount to anything in this county and the scabs that they are getting can't produce the goods. There are two guards to every scab, and the companies can not stand that long. We all feel grateful to our brothers in the East for the way they are coming to our relief.

Thos. Scott, Vice-Pres., Dist. 15."

(From the United Mine Workers Journal, issue of April 2, 1914, page 3:)

"Will the Guilt Lie There?

(By Adolph Germer)

Mother Jones is perfectly right and entitled to the highest praise and admiration for defying the sheep raiser who occupies Colorado's executive chair, and General Chase. Ever since the militia came into the strike field they have defied all law under the orders of Chase with the connivance of Ammons. Has Mother Jones not as much and more right to defy Ammons and Chase as they have to defy the legal guarantees of state and nation? Who are Ammons and Chase that they can defy state and nation and no one can defy them?

That Ammons and Chase in their fiendish desire to pliantly serve the Standard Oil interests have surpassed all bounds of reason has at various times been confidentially admitted by military officers in service in Colorado. Many acts that those officers perform under orders from Ammons through Chase or from Chase with the approval of Ammons are most distasteful to them. But they are soldiers and obey.

The Pueblo Chieftain, the leading slimy mouthpiece of lawlessness, on March 19 in an editorial says: 'If bloodshed results from Mary Jones going back to Trinidad the guilty ones will be those who are advising her to defy the State of Colorado.' Will they be the guilty ones? Are Ammons and Chase the State of Colorado? If so, since when? Has Colorado's citizenship so disintegrated that nothing left of the state except Ammons and Chase? Colorado's populace is deserving the utmost pity if it has been so sapped of its being that nothing is left but a specimen of humanity that can offer no logical reason for its existence and a bundle of singular egotism wrapped up in a uniform.

Let the people of Colorado decide by vote whether or not Mother Jones shall be permitted to go back into the strike region. If the people of Colorado were to determine that question Ammons and Chase would be 'snowed under' so deep that the infernal regions would not be able to thaw them out.

The Chieftain would have Mother Jones renounce her womanhood and bow in cringing sycophancy to the despotism of Ninny Ammons and Czar Chase.

Lieutenant Linderfeld on one of his rampages became so intoxicated that he like a madman, shrieked, 'I am Jesus Christ.' What a wonderful combination! Ammons and Chase are the state, while Linderfeld is Jesus Christ. Whatever they may or may not be, one

thing is certain, they have demonstrated their utter unfitness to be entrusted with the destinies of the people and clothing them with power gravely endangers the much-boasted liberties of the state and nation.

No, if blood is shed because of the return of Mother Jones to the strike zone the guilt will not be with those who advised her to return, but on the contrary, it will rest with Ammons and Chase and the kept, lying press of the moneyed interests which the Chieftain may justly boast of heading.

Had Ammons shown some backbone in the early stages of the strike and had he not exhibited a 'yellow streak' when the test to be a man was put to him, Colorado would not be paying $5,000 per day to ruffians in uniform to perform the most criminal acts in the interests of the coal barons.

The blood that has been shed, and that the Chieftain predicts that will be shed, will forever besmirch Ammons and Chase and those they serve. They are evidenty ashamed of their work and in their desperation are trying to fix the public's attention on those who are gallantly battling for their legal and inherent rights. They figure that if they can fix the attention upon the strikers, their own miserable and contemptible acts will escape detection.

Every crime that is being committed by those who claim to be the state will raise the veil of obscurity from the vision of the working class and soon they will avenge the grievous wrongs they are now suffering. Soon the working class will march to the ballot box and snatch from plutocracy that power which has always been used to enthrone wrong and crucify the right.

The unrest is spreading throughout this nation and abroad. The tyranny exercised by the money-mad of the world is arousing labor from its slumber, and the day is not far distant when the citadels of oppression and the oppressors will fall and right will make right.

Mt. Olive, Ill., March 28, 1914."

(From the United Mine Workers Journal, issue of April 30, 1914, page 2:)

"Fighting Continues With Assault Made on Chandler—Seven Persons Said to Have Been Killed

Denver, Colo., April 26.

After an all-day battle, between union and non-union miners, the town of Chandler was captured tonight by 1,100 strikers, according to messages reaching the governor's office.

Seven men, including four mine guards, were said to have been killed in the battle. The casualties in the strikers' ranks are unknown.

Canon City is terrorized lest the combatants carry the fight into that town, which is only a few miles from the mine.

An appeal to the governor for help from the sheriff of Fremont county, resulted in orders being issued tonight to General Chase to

proceed to Canon City with 200 militia to take protective measures and endeavor to bring about a truce.

At Trinidad tonight 102 armed deputy sheriffs with a Gatlin gun are entrenched in the court house. This precaution was taken because it was understood that Judge Musser, of the Colorado Supreme Court, and others of a committee appointed by the governor to investigate conditions were about to arrive.

Truce to be Brief

The truce lasts only until these men get there from Denver and announce what they will try to accomplish. Should this be unsatisfactory, it is said nothing can prevent an immediate battle.

General Chase, in charge of the troops, this afternoon again turned back members of the Red Cross society, who are trying to get into Ludlow from Trinidad. He declared he would let no person go into Ludlow unless the governor gave him direct orders to do so.

A crowd of 5,000 men and women stood in a pouring rain on the lawn in front of the capital this afternoon and heard the state administration denounced for 'permitting murders in the southern coal district.'

'Mother' Mary Jones, direct from Washington, created a sensation when she appeared, up to then unannounced.

Just before the arrival of 'Mother' Jones a resolution delegating that within the last 20 years 2,000 miners died because 'dividends could not be lessened by the expense of improvements'; that the state, county and municipal officials had been purchased and election machinery seized, desperadoes hired and militia used as a constant threat.

Lives are Pledged

The resolutions pledged the lives and liberty of the audience to the relief of 12,000 men, speaking thirty-six tongues. The strike districts which were in revolt demanded the withdrawal of troops; the seizure of mines by the state pending agreement by the strikers and operators; the cancelling of leases of 13,000 acres schools lands and the development of the state's local land acreage; a constitutional amendment, repealing the Moyer decision; denounced Governor Ammons and Lieutenant Governor Fitzgerald as traitors to the people.

At the conclusion of the speech-making the meeting adopted resolutions, condemning Governor Ammons as accessory to the murder of babies and demanding his impeachment.

The cigarmakers's union of Denver voted money to send 500 armed men to Trinidad and Ludlow tomorrow. There men will start at daybreak.

The Denver Federation of Labor this afternoon adopted a resolution to be presented to the national organization, asking that each of the 2,000,000 union laborers in the United States be assessed 5 cents a month to provide money and arms for the strikers.

"Strikers Succor Enemies Wounded and Non-Combatants—All-day Battle Rages in Mining Field—Many Mines Destroyed by Avengers—Twenty Face Death in Mine

"Trinidad, April 24.

J. W. Siple, Denver, president of the Southwestern Fuel Company, and twenty of his men are facing death tonight in the Empire mine as the result of their refusal to surrender to the strikers at Aguilar early this afternoon.

Three women, two children and two wounded men have been removed from the mine pit, preparatory to the resumption of the fighting.

A supply of air sufficient to last the captives about twelve hours remains in the mine, it is said. Unless aid reaches them by that time they will face the alternative of dying by suffocation or throwing themselves on the strikers' mercy.

Those who have been taken from the pit are William Waddell, mine superintendent, shot through the shoulder, his wife and Louis Waddell, their 13-year old son; Mather Waddell, mine clerk, and also Waddell's son, shot through the foot; the younger Waddell's wife and their 9 months' old daughter, and Mrs. John McIntyre, wife of the camp blacksmith.

J. W. Church, the mine's chief engineer, reported to have been killed in yesterday's fighting, is within the mine and safe. The only condition imposed by the strikers was that the men should surrender their arms and accept safe conduct from the district.

The wounded men, women and children who accepted it were conducted to a place outside the danger zone, and, if possible, will be placed on a train for Pueblo this morning.

At the Southwestern mine, which broke into flames early this afternoon, a battle is raging between guards and a strong force of strikers. The tipple and the camp have been destroyed, according to a report which reached here tonight, and the guards have been forced back into the mouth of the slope.

Firing All Along Canon

The firing is spreading rapidly all along Green Canon, in which both the Empire and the Southwestern mines are located.

Virtually the whole strike zone is in a state of terror. Should the troops fail in running the eighteenth-mile gauntlet spread for their reception, more damage may be done to property. Should the militia succeed, it is possible that the guerilla warfare will exist for weeks.

John Lawson, International Board Member of the United Mine Workers of America, announced definitely this afternoon that he would refuse to order the strikers to surrender their arms until they had been assured that they would receive fair treatment at the militia's hands. 'There can be no peace without justice,' he said.

Communication into the war district from Trinidad has been com-

pletely interrupted, and grave fears for persons on the mine company properties are entertained.

Enormous Loss is Feared

The mines now known to be ablaze are the Primrose, of the Colorado Fuel and Iron Company; Mine No. 4 of the Southwestern Fuel Company, the Green Canon mine of the National Fuel Company, and the Rugby mine of the Colorado Fuel and Iron Company.

In addition to the Royal and Broadhead mines, both operated by independent companies, are in ashes.

Major Hamrock at the Ludlow camp announced late to night that he was seriously contemplating the sending of at least a substantial proportion of his force in the direction of Aguilar so serious did he consider the situation there.

Aguilar is Fight Center

The storm center of the trouble virtually shifted today to Aguilar, and the liberation of the three women and five children from the pit of the Empire mine marked the first cessation in the fighting in more than twenty-eight hours. According to the reports of the trouble which have reached Trinidad, the shooting commenced at about 9 o'clock yesterday morning, when the strikers began to pour shots into the camp from the surrounding hills.

In anticipation of trouble, the women and children, under the direction of President Siple and other mine officers, had been removed to the tipple, about which the fight immediately centered.

Fire in the houses of the camp broke out almost immediately and, fanned by a light breeze, spread rapidly. The firing meanwhile redoubled and the shots ripped through the tipple house until it soon became untenable. The women are crowding in the slope, the entrance which Siple and his companions attempted to hold.

Three Strikers Killed

In the fighting before the entrance of the drift, three strikers, J. P. Gomez, Ben Vigil and Nick Schumich, were killed and a mine guard either killed or wounded.

The force of strikers about the entrance to the mine grew rapidly in number, but it was the spread of the flames to the tipple house which finally drove its defenders to abandon it and retreat further into the mine. A few moments later the strikers, according to R. D. King, one of the mine owners, who witnessed the engagement from his residence, a quarter of a mile away, effectively closed the entrance with dynamite. Shortly thereafter the wrecking of the fan cut off the circulation of air through the workings and the air shaft was blocked.

Communication Cut Off

The flames, which spread through the camp until every building was ablaze, cut off communication with the entombed persons until shortly after noon.

It was then that E. N. Snyder, one of the Aguilar strike leaders, announced over the telephone to Trinidad that an effort to reach Siple and his companion for the purpose of liberating them from their hazardous position, provided they would surrender their arms, was to be made.

Snyder said tonight that Siple had refused the proposal of surrender, though he had intimated that he might change his mind. Snyder also said that personally he 'Didn't care what he did.' 'The only quarter asked by Siple,' he declared, 'was protection for the women and children.'

According to reports which have been received from the younger Waddell, he received his wound when he ventured from the mine slope, in which his father and others were imprisoned, to recover a bank book which had been abandoned in his house.

While he was in the house the place was surrounded by strikers and he was taken prisoner. On his way to a boiler house, where he was to be detained, he was shot in the feet. His captors declared the affair was an accident. The elder Waddell received the bullet in the shoulder in attempting to go to his son's assistance. He succeeded in crawling back to the mouth of the slope, into which he was drawn. None of those in the custody by the strikers complained last night of the treatment they had received.

The fighting this morning began shortly after 5 o'clock, when from the Empire property and the town of Aguilar the strikers' forces surged northward, carrying everything before them. Their numerical strength at various places was estimated at between 700 and 1,200 men. For the most part little or no resistance was offered.

Primrose Property Fired

The Primrose property, from which the women and children had been removed to Rouse during the night, was the first to be consigned to the flames. Before volleys from the hills its defenders fell back, from building to building, until finally they were forced to flee to the hills.

A moment later the mine tipple and other wooden structures were ablaze and at 9 o'clock reports of dynamite heard at Rouse gave evidence that the slope and probably the air shaft had been destroyed.

Strikers surged over the ridges next in the direction of Rugby, which was evacuated by the few men who remained with the buildings without a struggle. Shortly thereafter, according to report, it also burst into flames.

Strikers Ready for Attack

The strikers then marched on Rouse, which is still unattacked, according to the best information obtainable. The last message sent out by its superintendent before communication was cut off was directed to the Colorado Fuel and Iron Company's offices here.

'For God's sake, send help,' it read. Since Rouse forms the key to the mines at Lester, Cameron and Walsen, it is feared that a determined effort to take it may be made.

At Cameron, as a precautionary measure, women and children have been placed in a concrete cellar, and similar steps have been taken to insure their protection at the other menaced points.

The last of the camps to report fear of attack were Primere and Segundo, operated by the Colorado Fuel and Iron Company. All the women from the strikers' Segundo tent colony have been removed, according to the superintendent's report, and a large party of armed men is visible on the hills. Neither of the camps could withstand a determined assault. Similar forces of men are visible on the heights above Berwind and Tabasco in the immediate vicinity of Ludlow, but no fear for their safety is entertained in view of the proximity of the militia men who occupy the Ludlow depot.

The Black Hills, held by the strikers, and Cedar Hill, on which the militia's machine guns are mounted, exchanged shots yesterday at long range, but no close fighting occurred. So far as is known no one was hurt.

Families Rushed to Trindad

The women and children in the vicinity of Segundo have nearly all left. The strikers' families have been brought to Trinidad, and the families of the railroad workers at that place have been taken to Weston.

Trinidad is crowded tonight with hundreds who have come in the camps. The crowds were orderly. Extra police were stationed at the morgue and at the hall where the bodies of Ludlow victims lie in state.

Funerals of Premo Larsie, Frank Robins and William Fyler were held yesterday. The bodies were accompanied to the graves by long processions.

A general funeral will take place today over the remains of sixteen of those who lost their lives at Ludlow. Separate services will be held for Louis Tikas, leader of the Greek colony at Ludlow, who was killed by militiamen near the close of the day's fighting.

An Italian fraternal order has contributed $600 for the relief of Ludlow victims."

"Mothers and Babes Slain in Safety Pits—Tents are Fired and Victims Perish from Smoke While Men, Trying to Rescue their Families, Are Killed by Machine Guns and Rifles—Renewal of Battle Expected

(By Harvey V. Duell, Staff Correspondent of the Rocky Mountain News)

Trinidad, Colo., April 21.

Thirty-three dead, more than two-thirds of them women and children; a score missing and more than a score wounded, is the toll known tonight to have been taken by the fourteen-hour battle which raged Monday and last night with uninterrupted fury between State troops and striking coal miners in the Ludlow district. The death list is growing hourly.

With arms ready, both sides now await the coming of dawn, when, it is for-cast, the battle will be resumed with greater bloodshed than that which has occurred. The militia, which yesterday drove the strikers from their tent colony, and it is charged, fired it, involving thereby the greatest loss of life, is preparing for a machine gun sortie at daybreak from their position along the Colorado Southern railroad tracks at each side of the Ludlow station.

On the surrounding hills, sheltered by rocks and boulders, 400 strikers await their coming, while their ranks are being swelled by grim-faced men who tramped overland in the dark, carrying guns and ammunition from the neighboring union camps. Italian, Greek and Austrian miners have appealed to their consular representatives for protection, and John McLennan, president of the local union district, today wired the Red Cross in Denver to be prepared to render aid.

On the outcome of the engagement tomorrow may depend the fate of the strike. Both sides face it as a battle of death, with no thought of quarter asked or received. At a last hour it was said here the battle could be averted only by the arrival of reinforcements from Denver.

No train service through the war zone is permitted. Telephone communication has been re-stablished. Major Hamrock is in command of the troops, hemmed in on all sides by the striker lines, which extend back three miles. Through this cordon only the dead wagon is allowed to pass."

(From the United Mine Workers Journal, issue of April 30, 1914, page 8:)

"Colorado or Mexico?

(By Adolph Germer)

Mt. Olive, Ill., April 27.

Where in darkest Russia have there been such horrifying crimes committed in the interest of capitalism and where has militarism run so mad as in the strike region of Colorado? Where on earth has the

brutality of capitalism so fully unmasked itself as when the helpless women and innocent children of the strikers were unmercifully shot and burned to death by professional murderers, clad in a military uniform?

Governor Ammons, General Chase, John D. Rockefeller, Jr., Major Hamrock, Lieutenant Linderfelt, Sheriffs Farr and Crisham, Jesse Northcutt and several others are the chief actors in the carnival of crime that will forever have a stigma on Colorado. They are responsible for the murders that have grown out of the strike. Had they done their duty; had they done one-half as much to enforce the law as they did to violate it, the strike would have ended in its infancy or perhaps been entirely averted.

All hail to the miners for the noble defense they made against the paid assassins. And all hail to the Printer's Union of Denver for sending $500 to the United Mine Workers of America with which to buy guns. Now I would that every other union that has funds would follow this splendid example.

I spent more than a year among the Colorado miners. They are men of all nationalities but they have only one purpose, and that is—the establishment of at least a degree of justice in that state. In this effort they deserve the fullest support of every person who has a human heart. These strikers are not fighting against 'duly constituted authorities.' They are fighting against usurped power and prostituted authority. In that fight I cheer them on and wish that circumstances might warrant my being with them again. Were it within my power I should without hesitation recruit an army of several thousand men, with fearless hearts and keen eyes, each one equipped with the best rifle that can be had and plenty of ammunition, and I would enjoy marching this army against Ammons, Chase and Linderfelt and drive these inhuman monsters to Hell, where they properly belong. If by some magic stroke I could this very moment put five thousand well-provided men into Colorado I would do it without equivocation, and I should finish what the brutes in uniform and high places have started.

I am not an advocate of violence, and have not lost faith in the power of the ballot, providing the enemy fights with the ballot. But when the enemy places guns in the hands of paid assassins, to wantonly slaughter the innocent, more than a ballot is needed to rebuke the crime. If it means death, we had better die fighting for the right than be shot down and burned to death without resentment. Let the slogan be, 'An eye for an eye, and a tooth for a tooth.'

Why go to Mexico when we have a Mexico within the confines of these United States? Why not first Americanize Colorado? Why not make Governor Ammons, General Chase and Lieutenant Linderfelt, who claims to be 'Jesus Christ,' salute the flag? Why not enlist in an army to defend the 'national honor' at home? The stars and stripes were shot into and burned down as well as the women and children.

What patriot, bubbling over with a desire to defend the 'national honor' in Mexico, has shown an eagerness to defend the 'national honor' at home?

Why not first Americanize Colorado? It is also a land of Rockefeller. Let the good work begin at home."

(From the United Mine Workers Journal, issue of May 7, 1914, page 3, three articles:)

"Chase Refuses Truce—Nine Militia Killed

Walsenburg, April 29.

Nine militia-gunmen were killed today by strikers after General Chase had refused to agree to a truce offered by leaders of the strikers.

Leaders Peter Quinn and E. M. Snyder, in charge of the Walsenburg district strikers, offered this morning to observe a truce until the United States troops came if the gunmen-militia would return to their tents. The militia commander communicated with Governor Ammons and Ammons with General Chase about the allowing of a truce. Chase and Ammons, anxious to do everything they could for the operators before their gunmen-militia should be disposed by the regulars, refused and the gunmen-militia tried to take the hogback, the strikers' position, nine of the gunmen falling. Firing is heavy this afternoon.

Every mine in the Walsenburg district, with the exception of the Walsen mine, the strongest fortified in the state, are in the hands of the strikers following thirty hours of fighting after Jeff Farr and his gang of gunmen attacked the strikers.

One hundred and fifty gunmen-militia were brought here from Ludlow last night and General Chase instructed them to disarm strikers and let the gunmen retain their arms, which the strikers refused to allow.

Henry Ford was killed by the gunmen-militia when he left the McNally mine on his motorcycle with a girl on the rear seat. The gunmen, following their plan of fighting men, women and children alike, turned a machine gun on him, killing him."

"Revolution Imminent Says Mother Jones

'The working people of America have stood all they can bear.'

It was Mother Jones speaking with a conviction so apparent that it startled.

'What does all this strife and turmoil growing out of the coal strike and the Ludlow massacre mean?' This was asked this 82-year old, white-haired, ruddy-faced, forceful woman, who lay in Governor Ammons' bullpens in southern Colorado for three months in an effort to arouse the voting women of the state to protest.

It means that the workers would rather die fighting to protect their women and children than to die in deathtrap mines producing more wealth for Rockefeller to use in crushing their children,' she added.

'It means that the whole nation is on the verge of a revolution.' "

"12 Die Before U. S. Brought Peace

Walsenburg, Colo., May 1.

Peace again reigned here and the 160 strikers who made it so hot for the militia in a three-day battle that General Chase sued for a truce over the 'phone from Denver have returned to their homes, taking their guns with them.

The total dead in the fighting was ten gunmen, one militia-man and one striker, who was shot by his friends when he lost the identifying white handkerchief they all wore on their arms."

(From the United Mine Workers Journal, issue of May 14, 1914, page 3.)

"Spirit of Revolt

(By Michael Halapy)

'You knock a man into the ditch, and then you tell him to remain content in the 'position in which Providence has placed him'—Ruskin.

It is but natural that the man in the ditch should revolt, especially if he has been knocked there by some external force designed to divest him of personal liberty and well-being. Any effort to keep him there meets with violent resistance. It is his constant vision to perfect himself and his surroundings. Everyone has an ideal. Some recognize it now, and pursue it blindly. But those who know their ideal as if it was already an actuality are methodical in its pursuit, and uncompromising with forces militating against its attainment.

The man in the ditch has an ideal. He might be humble in appearance, but he is majestic in the spirit. The impulses that he feels are the motive force of the world. Discontent fills his soul and he wants to climb out of the ditch. Laudable is his effort, for it is the chief cause of all achievement, of all progress.

To tell the man in the ditch to be content is to insult him. To say that his being there is the act of Providence is an attempt to charge up to Omnipotency the human cruelities and barbarities. Indeed, if it were the decree of Providence that human beings with souls and aspirations should live in ditches of poverty and degradation, then any attempt on their part to throw off these degrading influences would be a rebellion against God. For rebellion it is. But it is a rebellion against human injustice.

Today all over the world the man in the ditch is in rebellion against the forces striving to hold him there. He is a rebel at heart. He can not help it. Conditions made him such. He was born to cherish and love all those conditions which blend with his idea of justice and mercy; and his disposition is to be peaceable and rather tolerant. But great wrongs can not be tolerated. And of all the wrongs that which keeps an industrious man in the ditch is the greatest, for it does not only restrict the moral and material advancement of the man itself but it also retards the progress of the world.

It should not be necessary for man to fight for the fruits of his labor. Industry should bring its own reward; and the man in the ditch should be permitted to rise, to elevate to the full brilliancy of his manhood. But he has to fight to get out. Were it only to climb out the effort would be easy and the world would make more progress in one generation than it has in a thousand years.

To the man in the ditch mankind owes an infinite debt; and it should emblazon him with all the honors of a brave warrior who has fought a constant battle for human progress and civilization.

But for all his sacrifice and achievement this ditchman is held in wholesome contempt by tyrants who op-ose his laudable ambition to rise with the rest of mankind; and with a club, with a rifle, and with a machine gun, they endeavor to knock him back into the ditch. But as through all the ages, so now, flows in the mail of truth, the man in the ditch boldly meets and fights his foe. He fights for freedom. He sacrifices his life; his dear ones; his all for freedom. For real happiness can only be had in freedom. And has it not been aptly said, 'Give me freedom or give me death?'

And so it is with the striking miners in Colorado. They fight for industrial freedom—freedom to work out their own destiny, and slaves can not do this. The Rockefellers knocked them into the ditch, but they refused to stay there while they took the fruits of their labor. They tried peaceably to get out, but the tyrants would listen to no progress on their part, while they are aggrandizing the whole world. At this stage it would be well for the oppressors of the poor to remember that tyrants are becoming more and more hateful in the estimation of civilized people; and tyrants especially who are responsible for the massacre of innocent women and children will certainly not be tolerated.

Let us delight in the spirit of revolt so sublimely manifested by the Colorado miners. Theirs was genuine chivalry when they took up arms to avenge the cruel, merciless murder of their wives, mothers and children at Ludlow. Submission to this unspeakable horror would be cowardly and unexcusable, and shameful in men struggling for freedom.

Human progress can not be stopped with a gun or a club. This has been tried again and again throughout the centuries and mankind has kept on moving. The man in the ditch will certainly climb out in spite of the swaggering industrial despot. He will fight to get out; and he is entitled to high praise for this display of courage, for he is fighting for you, for me, for everybody."

(From United Mine Workers Journal, issue of May 14, 1914, page 2, two articles.)

"Legislature Approves Massacre—Grand Jury Indict Home Defenders

Denver, Colo., May 16.

The State of Colorado has placed its stamp of approval on the murder and cremation of men, women and children at Ludlow by murderous mine guards in militia-men's uniforms.

The coal operators paid some of these men $3.00 a day to carry out their work of slaughter. Up to the time of the Ludlow massacre there was some question as to whether these assassins should also be paid by the state.

But when they, clothed with the authority of the state, dressed in the uniform of its militia, and using the machine guns of the operators, swooped down on Ludlow April 20, burned it to the ground, killed and cremated 13 women and children and deliberately murdered Louis Tikas, and five others, they did such a noble service for Colorado that the state legislators decided this week to reward them by voting to pay them.

If there was ever any question that Colorado is owned body and soul by John D. Rockefeller, that idea was dispelled this week when the state legislature met. Rockefeller and his gang immediately took charge. Speaker Slattery, of the house of representatives, saloon keeper and gambler, whipped the corporation tools into line. Public sentiment alone prevented the establishment of a mounted Cossack force and a gun bill.

The passing of a million-dollar appropriation bill, however, shows clearly what labor can expect from the Colorado state government. Seven hundred thousand dollars of this is to pay the militia thugs and operators' assassins who for over six months intimidated the strikers in southern Colorado, murdered and assaulted them, insulted their womanhood and robbed and plundered their homes. This amount includes payment of the gunmen who were responsible for the Ludlow horror.

Colorado spent $700,000 in an attempt to break the strike of the coal miners. Today victory for the miners is but a short distance away. Ammons and Chase and others of the operators' tools determined, however, that victory shall not come to the miners until they have spent their every effort, so they had their gambler-led legislature provide $300,000 addition so that the militia can go back to the strike zone, if the federal troops leave, to complete their work of carnage.

The corporations played their usual card in labor struggles this week when they indicted six men for murder and more than 100 for conspiracy to murder one who was killed in the Boulder county troubles.

'Indictments of this character need not come as any surprise to men prominent in the labor movement,' said John R. Lawson, who is in active charge of the strike. 'Sometimes they come because the county officials are honest and jealous to perform their duty and serve their constituents and in an effort to preserve the law. Sometimes they come in a blind effort to help the corporations in their mad scramble to destroy all vestige of organized labor through intimidation and prosecution. At other times they come because some of the county officials are anxious to build up on a false foundation, at the expense of the county and the people, they are sworn to serve a political future. I have not at any time been able to discover a district attorney who was even willing to prosecute the coal corporations in whose mines dozens of men have been murdered through

their negligence. The miners' officials or the miners do not fear to meet a jury in any court of any country where they have an opportunity to get that measure of justice to which they are entitled.'

Among those indicted for murder was W. T. Hickey, secretary of the State Federation of Labor. His case shows how far the rotten government of the state will go in their struggle to destroy every vestige of labor in Colorado. Hickey not only was not in the fighting in which one was killed, but he was not even in Boulder county, where the indictment was brought in by the grand jury.

But Hickey is prominent in the labor movement, and that is sufficient reason for indictment on any charge in Colorado.

Federal troops have restored order in the strike district. The future must take care of itself. The serious condition of affairs in Mexico makes it certain that federal troops will not remain in Colorado very long. When they leave the operators will soon find an excuse to have their pet Ammons send the militia back to 'preserve the peace.' The people of the United States know what this potpourri of barrel-house bums, Baldwin thugs, women and children murderers and cremators did before. A leopard cannot change its spots. It is but natural to expect that they will renew their carnival of slaughter and carnage."

"3,000 Rifles Surrendered to Soldiers

(By United Press)

Trinidad, Colo., May 14.

More than 3,000 fire arms and about 70,000 rounds of ammunition have been surrendered to the federal soldiers here at 5 p. m. Wednesday, when the time for voluntary disarmament, according to Col. James Lockett's orders, expired.

Army officers said they believed both sides had given up all available guns, and a general search and seizure of arms was regarded as improbable.

The striking miners gave up, altogether, 852 rifles, revolvers and shotguns, while the mine guards surrendered 5 machine guns and 840 rifles, revolvers and shotguns. Three hundred of the rifles turned in by the strikers were one shipment from a New York manufacturer.

Figures are for Huerfano and Los Animas counties only.

The new Ludlow tent colony was laid out by union officials Wednesday afternoon. It is to be almost on the site of the old colony, which was burned by state militiamen on April 20."

(From United Mine Workers Journal, issue of May 21, 1914, page 7:)

"From Oklahoma—The Crowning Crime of Capitalism

Henryetta, Okla., May 12.

When we glance back over the ghastly history of the Alabama, West Virginia and Michigan strikes and the crimes committed

against our striking brothers by capitalistic hired thugs and assassins and culmination in the horrible massacre of Ludlow, we can only say that capital has overplayed its hand. All the crimes of Governor Comer's militia, the armored train of West Virginia, the death trap at Calumet, the cavalry charge on marching women at Trinidad and thousands less conspicuous details of the murderous war of the capitalistic class against the workers has had its cap sheaf of infamous lawless deeds when the Rockefeller hired murderers destroyed and massacred the Ludlow tent colony. This act will most certainly have the final unifying effect on the ranks of labor and if our rights must be defended with guns and our wives and children saved from bullet and flame by us with arms, let us not shirk the responsibility. To many of us who have always opposed direct action in the past, the bitter lesson has been written in the blood of the innocents of Ludlow, and seared into our minds by their burning tent homes that labor must use every weapon at our command, even unto the high power rifle and machine gun, if we will win our battles. Thugs and assassins murder our comrades in safety, protected by the laws and go unpunished for their lawless deeds. And so we are going over to the direct actionists by the hundred now. Their philosophy is the only visible solution. We would be worse than fools and cowards if we sat idly by and be clubbed by the militiamen, assassinated by deputy sheriffs and our wives and children murdered in their homes by hired assassins. In our future strikes our tents will and must be protected by high power rifle and the punishments the state militia refuses must be meted out by ourselves.

Anarchistic? Our enemies will cry. No, sir. It is simple justice opposing the anarchy of the mine owners. Until labor unites at the ballot box and the mines, mills and factories are restored to the people and the need of militiamen and hired thugs by our plutocratic masters is passed, these battles will of necessity be fought and we may as well meet the issue. We have conducted peaceable strikes and been murdered and clubbed in our passiveness. The professional gunman is abroad in the land and where a strike is in progress they gather, spreading murder and disorder, under obligation to no law but their own fiendish will, knowing no restraint but the mine owners' will, and these conditions must be met. Protest meetings and resolutions to congress have accomplished nothing. The murder of our brothers has gone merrily on. Appeal to constituted authority has been in vain.

And so we are face to face with a reality, not a theory, and it must be met with something besides denouncing protests, indignant resolutions and meaningless platitudes. Every rifle turned upon us and our camps and every blazing torch applied to our homes must be met with rifle and blazing torch, or the world will rightly judge us as spineless caricatures of men. Why should we dodge the issue and rant about law and order and rights of citizens when law and order leagues and citizens' alliances are murdering our brothers, desecrating our homes and burning our wives and children and are

defended by their dastardly deeds by the powers of the state governments. And so we have the issue to meet and let us meet it like red blooded men. We can put down the anarchy of capital only with the same measures employed against us.

Geo. R. Moore."

37. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Pete Hanraty:

"Now, is a strike against an attempted open shop operation in a field a local strike, as defined by the miners?"

38. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Pete Hanraty:

"I will ask you if the strike against an attempted open shop operation is a local strike?"

39. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Pete Hanraty:

"What is meant by 'trouble of a local character,' as understood in practice by the miners?"

40. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Pete Hanraty:

"Did such an attempt (to operate open shop in a union field) involve any miners except those in the particular district where you were?"

41. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Pete Hanraty:

"Would the starting up of a mine open shop in Arkansas, having a production of 4,000 tons a day, affect the relations between the union miners and union operators in district 21, would that be large enough to have any effect upon the situation?"

42. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, Pete Hanraty:

"Now, state whether or not a strike involving the question that this strike was over, as testified by the witnesses, and carried on in the manner described, is a local strike or not?"

43. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection by the de-

fendants, and in excluding the following offer of proof on the part of the plaintiffs, in connection with the witness Pete Hanraty:

"Mr. Drinker: I offer to prove by the witness on the stand that the term 'local strike' is a term which has a peculiar significance among the miners' organization, well understood by them; that it refers to a strike which involves the interpretation of the contract between the miners and the operators; that the term does not apply to a strike which is directed against an open shop attempted by a former union operator in a union field, for the reason that such a strike as that involves not merely the locality where the particular mine operates, but the other districts and the entire National organization, because such an operation, if allowed to go on without opposition or suppression by the miners' union, would inevitably spread first to the adjoining union mines, and then to the other union mines, to the adjoining districts, and ultimately to the entire National organization."

44. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection by the defendants, and in excluding the following offer of proof on the part of the plaintiffs, in connection with the witness Pete Hanraty:

"Mr. Drinker: I further offer to prove by this witness that under the provisions of Section 1 of Article 12 of the Constitution of District 21 of the United Mine Workers of America, a controversy over an attempted open shop operation of a former union operator in a union field does not constitute 'trouble of a local character' within the meaning of that section, and that those words, 'trouble of a local character' have a peculiar significance to the miners' organization, accepted by them in practice and followed different from the ordinarily accepted meaning of those words."

45. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in holding that the value of the leases, forfeited as the approximate result of the destruction of the property, could not be included in the measure of damages.

46. The Circuit Court of Appeals erred in refusing to reverse the action of the Lower Court in stating in the presence of the jury that the measure of damages would be the difference between the value of the property as it stood before the destruction, and the value immediately after the destruction, before the leases were forfeited as the approximate result of the destruction, thus excluding from the damages the recoverable value of the leases destroyed as a result of the destruction of the leased property.

47. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked the witness, B. W. Traer:

"Now, Mr. Traer, independent of these proceedings, as reported in these books, I wish you would state from your own recollection, what

in the course of these debates and proceedings was the position taken respectively by the operators and miners relative to the obligation of the miners under the Chicago agreement of 1898, in connection with the protection of the union miners from the competition of the non-union mines?"

48. The Circuit Court of Appeals erred in sustaining the action of the District Court in excluding the following offer of proof on the part of the plaintiff relative to the District and Local Funds being under the control of the National organization, as shown by the report of William B. Wilson, Secretary-Treasurer of the United Mine Workers of America, for the year 1906:

"It is the amount of money that was under the control of the National organization, and to show that the National organization had control of all of their funds. * * *

It is merely to show what the International had in their treasury. * * *

I merely want to show they (the districts) reported the amounts in their treasuries as showing that they were all under the one control."

(That portion of the report so offered in evidence, and excluded by the Court, is in words and figures as follows, to wit:)

"The amount we have in our National treasury does not by any means show the full financial strength of our organization or its defensive power.

There is in the National treasury	$389,546.40
Reports from 20 of our 23 districts show in the district treasuries	1,536,078.03
Reports from 21 of our 31 sub-districts show in their treasuries	115,449.99
Making a total in the treasuries of the various branches of our organization of	$2,679,134.43

These figures would undoubtedly be materially increased if we had complete returns from the districts, sub-districts and local union."

49. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the defendants' objection to the following question asked of the witness Dr. H. P. Routh:

"Did you hear any discussion amongst the union miners prior to July 1, 1914, relative to the permitting of small cooperative mines to run during a strike or suspension?"

50. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the defendants' objection to the following question asked of the witness Eugene McAuliffe:

"From the point of view of operating efficiency, railroad connection, and all physical conditions other than the condition in connection with the employment of labor under the union contract, what mines in the Arkansas field would you say were the best mines?"

51. The following question and answer having been asked and answered by the witness J. G. Puterbaugh:

"Now, Mr. Puterbaugh, in case of a mine in the Hartford Valley producing in 1914 say 800 tons a day, operating under a union scale, allowing but one man to work in a room, with all the other conditions then in effect under the union scale at that time, with an actual cost of $1.75 per ton, how much in your opinion could that cost have been reduced if that mine had been permitted in 1914 to run open shop, taking into consideration possible increase in daily and annual output, and possible readjustment of wages but not a general reduction in wages? * * *

A. "I would say fifty cents per ton reduction,"

the Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the further question of the said witness:

"In that answer did you take into consideration the possibility of increase in both the daily and the annual output of the mine by reason of open shop?"

52. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the objection of the defendants to the following question asked of the witness William V. Womack:

"Did you have any substantial fear that the guards were coming into Hartford to destroy the property and take lives as these rumors had indicated?"

53. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the defendants' objection and excluding the following offer of proof on the part of the plaintiffs:

"Mr. Drinker: We next offer from the proceedings of District 21, being Exhibit 53 of the old record.

* * * * * * *

"On page 141 of Mr. Covington's speech in the District convention in the same book. * * *

"Mr. Drinker: He was telling District 21, he was there to explain certain matters and he was not giving legal advice at all. I don't want to say before the jury what he was explaining but there is one statement that I ought to show that he made, and it was in a con-

vention of District 21 about President Stewart on the 6th of April. * * * It is just to show why Stewart took that trip. The other evidence shows that he was in Kansas City with White and came here and went back again.

* * * * * * *

"Mr. Drinker: This is a statement by him to District 21 of a fact. Mr. Covington was a conspirator——"

The matter referred to, so offered in evidence and to which the objection was sustained is in words and figures as follows, to wit:

"At the time the people gathered at No. 4 in April, 1914, I was at Kansas City representing the National organization in the trial of a cause pending in the courts in that city when a telegram came announcing there had been trouble at Prairie Creek. Upon receipt of this telegram your President, Mr. Stewart, left Kansas City and came to Arkansas for the purpose of ascertaining the cause of the trouble."

54. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the defendants' objection to the testimony of witness F. M. Morgan regarding the further acts of intimidation which occurred in January, 1915, as a part of the conspiracy alleged in the complaint.

55. The Circuit Court of Appeals erred in refusing to reverse the action of the District Court in sustaining the defendants' objection to the following question asked of the witness William McLachlan on cross examination:

"Was there no reason why you, as a union man did not want Bache to get shipping coal?"

56. The Circuit Court of Appeals erred in failing to hold that the verdict directed by the District Court is contrary to the law.

57. The Circuit Court of Appeals erred in failing to hold that the verdict directed by the District Court is contrary to the evidence.

58. The Circuit Court of Appeals erred in failing to hold that the verdict directed by the District Court is against the preponderance of the evidence.

59. The Circuit Court of Appeals erred in not holding that the verdict directed by the District Court is not supported by any evidence whatever.

Wherefore, the plaintiffs in error pray that the judgment of the Circuit Court of Appeals for the Eighth Circuit affirming the judgment of the District Court for the Western District of Arkansas, Fort Smith Division, rendered in this case, be in all things reversed and remanded for a new trial and for such relief as may be proper in the premises.

James B. McDonough, Henry S. Drinker, Jr., Edwin A. Lucas, Attorneys for Plaintiffs in Error.

Assignment of Error allowed as prayed this — day of ——, A. D. 1924.

—— ——, United States Circuit Judge, Eighth Circuit.

[File endorsement omitted.]

Bond on Writ of Error for $1,000—Approved and filed Sept. 6, 1924; omitted in printing

[File endorsement omitted.]

In United States Circuit Court of Appeals

[Title omitted]

Writ of Error and Return—Filed Sept. 6, 1924

United States of America, ss:

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said United States Circuit Court of Appeals for the Eighth Circuit, before you, at the December Term, 1923, thereof, between Clyde H. Finley, Receiver, and Coronado Coal Company, Denman Coal Company, Mammoth Vein Coal Mining Company, Bache-Denman Coal Company, Hartford Coal Company, Sebastian County Coal Company, Mammoth Vein Coal Company, Mammoth Vein Royalty Company, Prairie Creek Coal Mining Company, each and all by Clyde H. Finley, Receiver, plaintiffs-in-error, and United Mine Workers of America, P. R. Stewart, Fred Holt, John P. White, as President of United Mine Workers of America, United Mine Workers of America, District No. 21, P. R. Stewart, as President of the United Mine Workers of America, District No. 21, James Mullen, National Executive Board member United Mine Workers of America, William McLaughlin, William McLaughlin, as President United Mine Workers of America of District No. 21, Tom King, Tom King, as Board member of United Mine Workers of America, Jess Edwards, Charley Farley, Edward Cunningham, and Edward Cunningham as President of District No. 21, United Mine Workers of America, Frank J. Hayes, and Frank J. Hayes, as Vice President of the United Mine Workers of America, William Green and William Green as Secretary-Treasurer of the United Mine Workers of America, Joe Overman, O. A. Brooke, Dr. W. C. Chambers, Tom Kiger, Mike Cisco, Charles Hendricks, Jim Lee, Jake Thompson, George Burnett, Pink Dunn, Jim McNamara,

Pete McMullen, John Mastell, James Slankard, Local Union No. 340, United Mine Workers of America, Local Union No. 374, United Mine Workers of America, Local Union No. 560, United Mine Workers of America, Local Union No. 586, United Mine Workers of America, Local Union No. 1130, United Mine Workers of America, Local Union No. 1159, United Mine Workers of America, Local Union No. 1526, United Mine Workers of America, Local Union No. 1530, United Mine Workers of America, Local Union No. 1565, United Mine Workers of America, Local Union No. 1810, United Mine Workers of America, Local Union No. 18[illegible] United Mine Workers of America, Local Union No. 1824, United Mine Workers of America, Local Union No. 1842, United Mine Workers of America, Local Union No. 1912, United Mine Workers of America, Local Union No. 1934, United Mine Workers of America, Local Union No. 2053, 2027, United Mine Workers of America, Local Union No. 2110, United Mine Workers of America, Local Union No. 2160, United Mine Workers of America, Local Union No. 2316, United Mine Workers of America, Local Union No. 2494, United Mine Workers of America, Local Union No. 2766, United Mine Workers of America, Local Union No. 2769, United Mine Workers of America, Local Union No. 2770, United Mine Workers of America, Local Union No. 2772, United Mine Workers of America, Local Union No. 2841, United Mine Workers of America, Local Union No. 2880, United Mine Workers of America, M. B. Appleby, Bruce Jordan, Whit Miller, Ed Baker, H. S. Treadway, G. G. Daniels, John Turnipseed, Lewis Evans, Joe Coneoda, B. Trout, Joe Assola, Joe Kervillas, Wm. Rodden, Charles Blackburn, Joe Lanier, Albert Hunter, Rich. Handlin, Scott Adkins, Frank Petty, Claud Litchford, John Litchford, Otto Alimen, Carey Crumpton, Wm. Price, Peter McMullen, Jr., John Murray, Sam Wooten, Marion Hulsey, Maje Hulsey, Tom Watson, Derwood Warren, Harry Birkett, Willis Congo, Leslie Congo, Bud Congo, Chas. McKown, J. W. Howard, Bud Williams (Col.) John T. W. Davis, Brock Smith, (Col.) Ed. Kehee, and many other defendants too numerous to name, defendants-in-error, a manifest error hath happened, to the great damage to the said plaintiffs-in-error as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the City of Washington, D. C., and filed in the office of the Clerk of the Supreme Court of the United States, within thirty days from the date hereof, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, this 6th day of September, in the year of our Lord one thousand nine hundred and twenty-four.

Issued at office in the City of St. Louis, Missouri, with the seal of the United States Circuit Court of Appeals for the Eighth Circuit, and dated as aforesaid.

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Seal of United States Circuit Court of Appeals, Eighth Circuit.)

Allowed by Kimbrough Stone, U. S. Circuit Judge for the Eighth Circuit.

Sept. 5th, 1924.

RETURN TO WRIT

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled cause, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 18th day of September, A. D. 1924.

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, by Eugene C. Fisher, Deputy Clerk. (Seal of United States Circuit Court of Appeals, Eighth Circuit.)

[File endorsement omitted.]

CITATION—In usual form, showing service on Henry Warrum et al.; filed Sept. 6, 1924; omitted in printing.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing transcript composed of three volumes, Volume I consisting of pages A to 800, inclusive; Volume II consisting of pages 801 to 1600, in-

clusive; and Volume III consisting of pages 1601 to 2424, inclusive, contains the transcript of the record from the District Court of the United States for the Western District of Arkansas as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Clyde H. Finley, Receiver, et al., were Plaintiffs in Error and the United Mine Workers of America, et al., were Defendants in Error, No. 6541, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original writ of error with the Clerk's return endorsed thereon, the original citation with acceptance of service endorsed thereon and the original waiver of service of citation are hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this eighteenth day of September, A. D. 1924.

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. (Seal of United States Circuit Court of Appeals, Eighth Circuit.)

Endorsed on cover: File No. 30,636. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 671. Clyde H. Finley, receiver, and Coronado Coal Company, Denman Coal Company, et al., plaintiffs in error, vs. United Mine Workers of America, P. R. Stewart, Fred Holt, et al., etc., et al. Filed September 29, 1924. File No. 30,636.

DEC 18 1924
WM. R. STANSBURY
CLERK

No. 671.

OCTOBER TERM, 1924.

IN THE

Supreme Court of the United States

2168
12

CORONADO COAL COMPANY, et al., Plaintiffs in Error,

vs.

UNITED MINE WORKERS OF AMERICA, et al.,
Defendants in Error.

IN ERROR TO THE CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT, NO. 6541.

BRIEF FOR PLAINTIFFS IN ERROR.

JAMES B. McDONOUGH,
Fort Smith, Ark.,
HENRY S. DRINKER, Jr.,
EDWIN A. LUCAS,
780 Bullitt Building, Phila., Pa.,
Attorneys for Plaintiffs in Error.

Allen, Lane & Scott, Prs., Philadelphia.

INDEX AND OUTLINE OF BRIEF.

PAGE

STATEMENT OF THE CASE 1
Brief history of the litigation 1
The questions involved 4
SPECIFICATION OF ERRORS 6
POINTS 9
ARGUMENT 10
Slocum *vs.* Ins. Co. 228 U. S. 364 11
I. There was sufficient evidence for submission to the jury on the question of defendants' intent to interfere with interstate commerce and competition 13
This Court's ruling at the first trial as to proof necessary to show intent to restrain interstate commerce 14
Testimony at the second trial as to intent by defendants to interfere with interstate commerce and competition. 16
The same testimony as in the original record showing adoption by defendants of the General Policy to protect Union operators against the competition of cheap cost open shop coal 17
Cumulative testimony showing the knowledge and adoption of the General Policy by defendants in District 21 and its execution by unlawful means 18
New and non-cumulative testimony showing directly that Stewart and his accomplices destroyed plaintiffs' property for the primary purpose of preventing plaintiffs'coal from competing in interstate commerce with that of the Union operators 20
A. Circumstances indicating defendants' intent to restrain interstate commerce 21
1. The direct participation of National President White of itself indicates the predominance of the General Policy as a primary actuating motive 21
This Court's statement to the above effect 22
2. Plaintiffs' product was so important in affecting prices in interstate commerce that its destruction by defendants indicates an intent thereby to restrain such commerce 22

5+3032

PAGE

The actual and potential output of plaintiffs' mines.. 22
Distinction between daily and annual capacity..... 24
Reason for operating open shop..... 24–5
Corroborative circumstance as to the potentiality of plaintiffs' mines on prices in interstate commerce.. 25
The menace to the United Mine Workers from plaintiffs' open shop operation.
Saving by open shop operation..... 25
Effect of plaintiffs' open shop operation on competing Union mines..... 26
Plaintiffs' intention to reduce the price of their coal..... 27
3. Additional circumstances indicating an actual intent to interfere with interstate commerce..... 28
Coincidence of the attacks with plaintiffs' readiness to ship coal..... 28
Intimidation of Midland Valley Railroad Repair Gang..... 29
Failure to molest little Looper mine..... 29
The independent destruction of the cars loaded with coal for shipment to other States..... 30
Summary of circumstances indicating interstate intent 32
B. Direct testimony and declarations by the parties showing specific intent.
James K. McNamara..... 33
Presidents White and Stewart arrange the plan to prevent plaintiffs' open shop operation... 34
White's instructions to McNamara and Slankard and his reasons for suppressing plaintiffs' shipments..... 35
Dissemination among the conspirators of White's reasons and instructions..... 37
Declarations by defendants as to their intention in destroying plaintiffs' property..... 37
Wm. B. Tharel..... 38
Dr. H. P. Routh..... 40
T. F. Lingo..... 43
O. A. Brooke..... 44
Elmer Bohannon..... 45
T. A. Hall..... 45
Jake Ritchie..... 46
G. W. Skow..... 46
F. J. Holloman..... 47

PAGE

A. W. McGee..... 47
J. L. Finney..... 48
The most active conspirators were men who were not plaintiffs' former employees..... 50
Additional new testimony that would have warranted the jury in finding that the conspirators were not motivated by local causes 51
Defendants made no attempt at the new trial to show that such local causes influenced them..... 52
Conclusion as to proof of interstate intent... 54
Summary of such proof..... 54
Stuart *vs.* Hayden, 169 U. S. 1..... 57
U. S. *vs.* Reading Co., 226 U. S. 324..... 57
Loewe *vs.* Lawler, 208 U. S. 274..... 58
Hitchman Coal Co. *vs.* Mitchell, 245 U. S. 229..... 58
American Foundries *vs.* Tri City Council, 257 U. S. 184, 211..... 58
Certain pertinent extracts from this Court's decisions.....59–61
Kidd *vs.* Pearson, 128 U. S. 1, and similar cases distinguished..... 62
II. There was sufficient evidence for submission to the jury on the question of the liability of the National Organization 63
Summary of testimony and this Court's rulings on the first writ of error..... 63
The relative power and status of the National body and its District and Local Branches..... 65
1. The destruction was effected in the prosecution of the business and primary object of the National Organization..... 67
2. There was competent new testimony for submission to the jury that the destruction was initiated, participated in and ratified by the National body..... 71
(1) General directions by National Officers to officers and members of District 21 to prevent the shipment and competition of open shop coal..... 71
(2) The destruction of plaintiffs' business and property was planned, ordered

PAGE

and expressly ratified by National President White 73
White's formation of the plan 73
White's direction of the attack ... 74
White's express ratification 76
(3) Publication by the Executive Board of Journal Editorial in pursuance of White's plan 77
3. The enlarged powers of the National President by authoritative construction of the National Constitution by the National Executive Board 80
4. The destruction was not a mere incident in a local strike, President White's order therefor being independent of the existence of any strike 83
5. The destruction was a step in a preexisting conspiracy, of Nation-wide scope, to which the National Body and District 21 were both parties 89
Allegations of complaint as to Nation-wide conspiracy and monopoly 89
No attempt to prove such at the first trial 89
Proof of purpose of open shop campaigns in Pennsylvania, West Virginia, Vancouver and Colorado from 1910 to 1914 90
Offers of proof:
Irwin, Penna. 1910-11 92
West Virginia 1912-13 94
Vancouver and Colorado 1913-14 .. 95
Application of the Rule of Reason to Labor cases 98
Proof of conspiracy by a series of events under a common direction and for a common purpose with strikingly similar unlawful methods of execution 100
Summary of new proof at the second trial relative to the liability of the National organization 102
III. The rejected offers to prove the Nation-wide conspiracy and monopoly should have been admitted 105

TABLE OF CASES CITED.

	PAGE
Addyston Pipe & Steel Co. *vs.* U. S., 175 U. S. 211	60
Aetna Life Ins. Co. *vs.* Ward, 140 U. S. 76	57
Aiken *vs.* Wis., 195 U. S. 194	60, 61
American Bank *vs.* Miller, 229 U. S. 517	78
American Foundries *vs.* Tri City Council, 257 U. S. 184	58
American Lumber Co. *vs.* U. S., 257 U. S. 377	60, 98, 7a
Armstrong *vs.* Ashley, 204 U. S. 272	78
Bank *vs.* Dandridge, 12 Wheat. 64	88
Butler *vs.* U. S., 13 Wall. 456	105
Clayton Act	99
Clune *vs.* U. S., 159 U. S. 590	105
Coe *vs.* Errol, 116 U. S. 517	61
Corsicana Nat. Bank *vs.* Johnson, 251 U. S. 68	57, 91
Debs In re, 158 U. S. 564	62
Denver & R. G. R. Co. *vs.* Harris, 122 U. S. 597	88
Distilled Spirits, re, 11 Wall. 356, 367	78
Duplex Co. *vs.* Deering, 254 U. S. 443	59, 99
Eureka Pipe Line Co. *vs.* Hallanan, 257 U. S. 265	61
Finley *vs.* United Mine Workers, 300 Fed. 972	4
Gompers *vs.* Bucks Stove & Range Co., 221 U. S. 418	60
Hanley *vs.* R. R., 187 U. S. 617	29
Heike *vs.* U. S., 227 U. S. 131	105
Hitchman Coal Co. *vs.* Mitchell, 245 U. S. 229	58, 88, 99
Insurance Co. *vs.* Moseley, 8 Wall. 397, 404, 405	57
Kidd *vs.* Pearson, 128 U. S. 1	62
Lemke *vs.* Grain Co., 258 U. S. 50	61
Loewe *vs.* Lawler, 208 U. S. 274, 235 U. S. 535	58, 59, 81
Martin *vs.* Webb, 110 U. S. 7	88
Minnesota Rate Cases, 230 U. S. 352	61
Montague *vs.* Lowry, 193 U. S. 38	58
Mutual Ins. Co. *vs.* Hillman, 145 U. S. 285, 295	57

PAGE

Nash *vs.* U. S., 229 U. S. 373 60
N. Y. C. & H. R. R. Co. *vs.* U. S., 212 U. S. 481 88
N. Y. Life Ins. Co. *vs.* Armstrong, 117 U. S. 591 105

Pennsylvania *vs.* West Virginia, 262 U. S. 553 62
Pennsylvania Sugar Co. *vs.* American Sugar Co., 166 Fed. 254 ... 58
Pierce *vs.* U. S., 252 U. S. 239 57

Queen *vs.* Most, L. R. 7, Q. B. D. 244 106

Regina *vs.* Sharpe, 3 Cox's C. C. 288 106
Rogers *vs.* Vicksburg R. Co., 194 Fed. 65 88

Schultz *vs.* U. S., 200 Fed. 234, 237 105
Shawnee Compress Co. *vs.* Anderson, 209 U. S. 423 58
Slocum *vs.* New York Life Ins. Co., 228 U. S. 364 11
Spaulding *vs.* Evenson, 150 Fed. 517 70
Spies *vs.* People, 122 Ill. 1; 123 U. S. 131 106
Stafford *vs.* Wallace, 258 U. S. 495 61
Stuart *vs.* Hayden, 169 U. S. 1 57
Swift *vs.* U. S., 196 U. S. 375 61

Temple Iron Case, see U. S. *vs.* Reading Co. 57, 58

United Leather Workers *vs.* Herkert, U S. Adv. 1923–4, P. 705 ... 27
United Mine Workers *vs.* Coronado Coal Co., 258 Fed. 829 .....
United Mine Workers *vs.* Coronado Coal Co., 259 U. S. 344 .. 1, 10, 14, 15, 16, 20, 22, 25, 27, 30, 51, 55, 64, 67, 86, 91, 15a, 27a, 72a
United Mine Workers *vs.* Penna. Mining Co., 300 Fed. 965 ..... 4, 31
U. S. *vs.* American Tobacco Co., 221 U. S. 106 ..... 58, 98, 101
U. S. *vs.* Knight Co., 156 U. S. 1 ..... 61, 62
U. S. *vs.* Patten, 226 U. S. 525 60
U. S. *vs.* Reading Co., 226 U. S. 324 ..... 57, 60
U. S. *vs.* Standard Oil Co., 221 U. S. 1 ..... 60, 98, 101

I & III Wigmore Evidence, Secs. 118, 1714, 1725, 1728 57
Wood *vs.* U. S., 41 U. S. 342, 360 105

In the Supreme Court of the United States.

OCTOBER TERM, 1924. No. 671.

Coronado Coal Company, et al., *Plaintiffs in Error,*

vs.

United Mine Workers of America, et al., *Defendants in Error.*

IN ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH DISTRICT. No. 6541.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

This is a suit by the receiver of seven coal companies, all owned by the same interests and operated as a unit, to recover treble damages under the Sherman Act from the United Mine Workers of America, from the subdivision or branch thereof known as District 21, (being the district or subdivision covering the States of Arkansas, Oklahoma and Texas), from certain subdivisions of the main organization within District 21, known as Local Unions, and from certain named individuals. The basis of the cause of action is the interference with and the destruction of plaintiffs' business and property by the defendants between April 6th and July 20th, 1914.

This is the same cause as was heard by the Court on a prior writ of error (United Mine Workers *vs.* Coronado Coal Company, 259 U. S. 344). The case now before the Court, however, is a materially different case from the one previously presented, the present case being an appeal from a second trial at which a substantial amount of entirely new evidence was introduced.

The first trial was held in 1917 in the District of Arkansas before Judge Elliott, specially presiding, after the Circuit Court of Appeals had reversed a judgment for defendants entered on demurrer by the District Court. The first trial resulted in a verdict and judgment for plaintiffs against all the defendants, which judgment was affirmed by the Circuit Court of Appeals.

On writ of error this Court sustained plaintiffs' position as to the suability of an unincorporated labor union under the Sherman Act, and as to the proper joinder of parties, and held that the evidence was ample to sustain the verdict of the jury that District 21 was responsible for the injuries and damage suffered by plaintiffs. This Court, however, reversed the judgment as to all parties, holding, in respect of District 21 and its officers and members, that plaintiffs had failed to produce testimony sufficient to warrant a finding by the jury that the defendants had been actuated by the intent to interfere with interstate commerce. This Court also held that plaintiffs had failed to produce testimony sufficient to warrant a finding that the main organization, the National body, had initiated, participated in or ratified the destruction of plaintiffs' property.

This Court did not hold that any of plaintiffs' evidence was inadmissible, but merely that it was insufficient.

The case was accordingly retried before Judge Pollock, specially presiding, at Fort Smith, in October, 1923.

At the second trial plaintiffs first introduced (by calling certain of the witnesses and reading into the record the prior testimony of others) substantially all the evidence in the first record. This evidence plaintiffs supplemented by a considerable amount of new testimony of a cumulative nature, to fortify plaintiffs' position before the jury in connection with matters as to which this Court had held that there was already testimony sufficient, as a matter of law, to warrant a finding by the jury in plaintiffs' favor.

Plaintiffs then introduced an entirely new class of testimony, as to the matters in connection with which this Court had held that the proof in the first record was lacking, namely, as to the existence of a specific intent of defendants to restrain interstate commerce, and as to the participation by the National Organization.

During the trial plaintiffs offered evidence to prove that the destruction of plaintiffs' property by defendants was pursuant to and was a step in a nation-wide combination and conspiracy, the purpose and object of which was to attain, by unlawful means, and to exercise, the domination and monopolistic control of the production and distribution of coal throughout the United States. The evidence so offered showed the several steps by which such policy was developed and accomplished, such steps consisting of a series of similar unlawful attacks against open shop coal operations throughout the country, immediately preceding and in some cases being coincident with the attack on plaintiffs. Judge Pollock refused, however, to admit testimony as to any events other than those at plaintiffs' mines in 1914.

After both sides had introduced all their evidence and rested, Judge Pollock directed a verdict for the defendants on the ground that under the decision of this Court on the prior record, plaintiffs had not pro-

duced sufficient evidence to justify the submission of the case to the jury as against any of the defendants.

Judgment upon the verdict was affirmed by the Circuit Court of Appeals, from which judgment the present writ of error is taken (300 Fed. 972).

The Questions Involved.

The principal questions involved in the present record, raised by the trial Judge's direction of the verdict for defendants, are:—

Was there sufficient evidence for submission to the jury to show defendants' intent to interfere with and restrain interstate commerce and competition?

Was there sufficient evidence for submission to the jury to show that the National Organization originated, participated in or ratified the destruction of plaintiffs' property?

Bearing on both the above matters is the question raised by the trial Judge's exclusion of all plaintiffs' testimony and offers of proof to show that the destruction of plaintiffs' property was a step in the unlawful combination and nation-wide conspiracy above described, which defendants had formed prior to the attack on plaintiffs and in which they were then engaged.

The facts in this case are so closely woven in with the law that to make separately a complete preliminary statement of facts would involve unnecessary duplication. The analysis of the new testimony is therefore included in the argument.

By reason of the length of the record, it was deemed helpful to the Court to make a digest of the evidence on the principal points, and on certain matters essential to a proper understanding of these questions. This analysis is contained in four Appendices to the brief, bound in a separate volume, as follows:—

Appendix A (pages 1a to 116a) contains a digest of the principal items of evidence to show specific intent to restrain interstate commerce.

Appendix B (pages 117a-128a) abstracts the 15 reasons detailed by the witnesses for the great reduction in operating cost which they testified would result from plaintiffs having been permitted by defendants to operate open shop.

Appendix C (pages 129a-138a) reproduces from the record an editorial published in the United Mine Workers Journal. It also quotes an article from the same Journal illustrative of those rejected by the trial Judge, both being referred to in the brief proper.

Appendix D (pages 139a-153a) is entitled Chronology. This not only gives a consecutive account of the principal events, but contains certain illuminating details and sidelights on the principal events, brought out for the first time in the second trial.

SPECIFICATION OF ERRORS.

The Court below erred:—

1.

In holding that there was not sufficient evidence for submission to the jury to warrant their finding that the conspirators were primarily actuated by an intent to restrain interstate commerce (Assignment of Errors Nos. 1 to 59 inclusive; Record, pp. 2327-2383).

2.

In holding that there was not sufficient evidence for submission to the jury to warrant their finding that the defendant, the National Organization of the United Mine Workers, initiated, participated in or ratified the conspiracy pursuant to which plaintiffs' property was destroyed in violation of the provisions of the Anti-Trust Act (Errors 1-59 inclusive; Record, pp. 2327-2383).

3.

In sustaining by its judgment the ruling of the trial Judge in rejecting plaintiffs' offers to prove the nation-wide conspiracy and attempt by defendants to monopolize all interstate commerce in coal and to subject it to the control of their organization, the offers alleging that the destruction of plaintiffs' property was a step therein (Errors 3-36 inclusive; Record, pp. 2327-2379).

4.

In sustaining in its judgment the following rulings by the trial Judge:—

Rejecting testimony offered by plaintiffs to prove the authoritative construction by defendants in practice of certain phrases in their Constitution alleged to have a special significance different from the ordinary meaning of the terms (Errors Nos. 37, 38, 39, 40, 42, 43, and 44; Record, pp. 2379-2380).

5.

Sustaining defendants' objection to the following question asked the witness Hanraty, former President of District No. 21 U. M. W. A.

"Would the starting up of a mine open shop in Arkansas, having a production of 4,000 tons a day, affect the relations between the union miners and union operators in District 21, would that be large enough to have any effect upon the situation?" (Error No. 41; Record, p. 2379.)

6.

Sustaining defendants' objection to the following question asked by plaintiffs' counsel on cross-examination of defendants' witness McLachlan, Board Member of District 21 in charge at Prairie Creek:—

"Was there any reason why you, as a Union man, did not want Bache to get shipping coal?" (Error No. 55; Record, p. 2383.)

7.

Holding that the value of the leases forfeited as the proximate result of the destruction by defendants of plaintiffs' property, could not be included in the measure of damages (Errors Nos. 45 and 46; Record, p. 2380).

8.

Sustaining the objection by defendants to the question asked the witness Traer as to the substance of the Debates in the Central Competitive Field (Error No. 47; Record, pp. 2380-1).

9.

Excluding proof as to the manner of the distribution of defendants funds among its subordinate branches (Error No. 48; Record, p. 2381).

10.

Precluding the witness Puterbaugh from explaining the basis of his estimate of the saving to be effected by open shop operation (Error No. 51; Record, p. 2382).

11.

Excluding certain declarations by Webb Covington in a Convention of District 21 (Error No. 53; Record, pp. 2382-3.)

12.

Excluding certain evidence of overt acts by defendants in January, 1915, in spite of the allegations in the complaint of the continuance of the conspiracy subsequent to said date (Error No. 54; Record, p. 2383).

POINTS.

I. There was sufficient evidence for submission to the jury on the question of defendants' intent to interfere with Interstate Commerce.

II. There was sufficient evidence for submission to the jury on the question of the liability of the National Organization.

III. The rejected offers to prove the nation-wide conspiracy and attempted monopoly should have been admitted.

The specifications other than the first three will either be covered by the decision on these three, or are ruled by the decision of the Circuit Court of Appeals on the first Writ of Error and not here modified. Errors 4 to 12 are here specified by plaintiffs to preserve their position.

ARGUMENT.

This suit being based upon the Sherman Act, it was necessary for the plaintiffs, in order to recover judgment against District 21, to produce sufficient evidence to warrant a finding of a jury (*a*) that plaintiffs' property was destroyed by District 21, and (*b*) that this destruction was undertaken with the intent to restrain interstate commerce.

In order to enable plaintiffs to recover from the National body it was necessary for plaintiffs to produce sufficient evidence to warrant a finding that the National body initiated, participated in, or ratified the destruction of plaintiffs' property.

No argument is required to show that District 21 caused the destruction. Plaintiffs' evidence in the present record on this point is identical with and even stronger than the evidence in the prior record, which this Court held sufficient to support such a finding in plaintiffs' favor. This Court said:—

> "The overwhelming weight of the evidence establishes that this was purely a union attack, under the guidance of the District officers. The testimony offered by defendants to show that it was only an uprising of the indignant citizens of the countryside really tended to confirm the guilt of the District No. 21. Its palpably artificial character showed that basis for it had been framed in advance for the purpose of relieving the officers of District No. 21 and the Union miners of that neighborhood from responsibility for the contemplated execution of their destructive and criminal purpose. It is a doubtful question whether this responsibility was not so clearly established that, had that been the only element needed to justify a verdict, the Court might properly have directed it" (259 U. S. 401-2).
>
> "The ridiculous improbability that the guards at Prairie Creek who were engaged in protecting themselves and the property and in constant fear of attack should make this unprovoked assault upon the

town of Frogtown is manifest from the slightest reading of the evidence" (p. 400).

The present argument will therefore be devoted primarily to the first two points above specified, namely,

I. Whether the new record contains sufficient testimony for submission to the jury that the defendants who destroyed plaintiffs' property were actuated in so doing by the primary purpose of interfering with interstate commerce; see *infra,* pp. 13-62.

II. Whether this record contains sufficient testimony for submission to the jury that defendants' main organization, the National body, initiated, participated in or ratified the destruction of plaintiffs' property. See *infra,* pp. 63-104.

The admissibility of the testimony relative to the nation-wide conspiracy and monopoly, rejected by the trial Court, will be largely covered in the discussion of these first two points. See also *infra,* pp. 105-109.

Inasmuch as this case arises on a different record, containing materially new testimony not before this Court on the former writ of error, it seems pertinent to point out at the outset that although this Court will doubtless follow, whenever applicable in the present case, the principles of law announced by this Court in its prior decision, the conclusions and inferences of fact stated in the former decision and based on the testimony in the first record are applicable to the present record only to the extent that the evidence is the same in each.

In Slocum *vs.* New York Life Insurance Company, 228 U. S. 364, this Court held that under the 7th Amendment, the Federal Courts have no power to enter a judgment against a party in whose favor a jury had rendered its verdict but that, if the judgment be reversed

on account of an error of law, the case must go back for a new trial. Justice Van Devanter said:—

> "According to the rules of the common law, such an error, like other errors of law affecting a verdict, could be corrected on writ of error only by ordering a new trial. In no other way could an objectionable verdict be avoided and full effect given to the right of trial by jury as then known and practiced. And this procedure was regarded as of real value, because, in addition to fully recognizing that right, *it afforded an opportunity for adducing further evidence rightly conducing to a solution of the issues.* In the posture of the case at bar the plaintiff is entitled to that opportunity, and for anything that appears in the record it may enable her *to supply omissions in her own evidence,* or to show inaccuracies in that of the defendant, which will rightly entitle her to a verdict and judgment in her favor" (p. 380).
>
> "The reversal operated to set aside the verdict and to put the issues at large, as they were before it was given" (p. 399).

It is submitted that on the present writ of error plaintiffs are entitled to have their new evidence considered with the same force and effect as if it had been in the first record.

POINT I.

THERE WAS SUFFICIENT EVIDENCE FOR SUBMISSION TO THE JURY ON THE QUESTION OF DEFENDANTS' INTENT TO INTERFERE WITH INTERSTATE COMMERCE.

(References by figures are to the pages in the record unless preceded by *supra or infra,* in which case they are to this volume. References to the several Appendices are so indicated.)

The complaint alleged that the destruction of the property was actuated by the specific intention of preventing the shipment by plaintiffs, of their low cost open shop coal, to the competitive interstate markets served by them, in competition with higher cost coal mined by the Union Operators, with whom the Union had closed shop agreements.

Before discussing in detail the testimony in the present record on this question, and in order to make clear in what essential particulars this new testimony supplements that in the first record, we shall briefly advert to the testimony in the first record and to the decision of this Court as to why it was insufficient.

The First Record.

At the first trial plaintiffs were unable to obtain any direct evidence, in the shape of testimony or declarations by the actual conspirators as to their purpose and motive in destroying the property. They were thus forced to rely, for proof of the intent essential to sustain their case, on inferences which they sought to draw from proof of the general policy of the Union as developed in other fields.

As stated by this Court, this evidence in the former record consisted of a history of the relations from 1898 to 1914 between the International Union and the Union coal operators of certain so-called competitive districts (Illinois, Indiana, Ohio and Western Pennsylvania),

showing "the stimulation of union leaders to press their unionization of non-union mines, not only as a direct means of bettering the conditions and wages of their workers, but also as a means of lessening interstate competition for Union operators which in turn would lessen the pressure of those operators for reduction of the Union scale or their resistance to an increase" (259 U. S. 408).

Plaintiffs' argument on the first record was this:—

Although the testimony as to the development and adoption of the general policy to protect Union operators against open shop competition was practically confined to the Central Competitive field, such policy was equally applicable to District 21 and was presumably known and recognized by District President Stewart and his associates, who must also have known that 75 per cent. of plaintiffs' coal went to other states. Since coal could be mined so much cheaper open shop than under Union restrictions it was but reasonable, plaintiffs contended, for the conspirators to expect that if plaintiffs were allowed to continue open shop, they would cut the price of their coal, undersell the Union operators in the interstate markets and so endanger the relations of the Union with such Union operators.

In view of the foregoing situation plaintiffs argued that it was for the jury to say whether, under the circumstances, the primary purpose of the conspirators was the furtherance of this general policy.

With the above contention this Court did not agree, holding that, under the facts in the record before it, the argument involved too many inferences not fortified by any competent proof. The Court said:—

> "while these conventions and discussions may reveal a *general policy,* the circumstances or direct evidence should supply the link between them and the local situation to make an unlawful strike, not initiated

or financed by the main organization, a step in an actionable conspiracy to restrain the freedom of interstate commerce which the Anti-Trust Act was intended to protect" (p. 409).

On the record then before it this Court found that the proof failed to show participation by the National Organization and further held:—

"In the case at bar there is nothing in the circumstances or the declarations of the parties to indicate that Stewart, the President of District No. 21, or Holt, its Secretary-Treasurer, or any of their accomplices had in mind interference with interstate commerce or competition when they entered upon their unlawful combination to break up Bache's plan to carry on his mines with non-union men" (p. 411).

This Court held that in view of the circumstances there appearing, the maximum potential output of all the Bache-Denman mines (which this Court understood from the evidence to be but 5000 tons *per week*) was too small to have a substantial effect on prices of coal in interstate commerce, and that for this reason, no intent to restrain interstate commerce could be inferred from the destruction of plaintiffs' property.

This Court did not hold that the destruction of plaintiffs' coal mines *could* not be actionable under the Sherman Act. It merely held that the proof of an intent on the part of defendants to interfere with interstate commerce was an essential part of plaintiffs' case, and that in the record then before the Court there was not sufficient evidence to show such intent.

From the following quotation from this Court's opinion it is apparent not only under what conditions the destruction of a coal mine would be so actionable, but by what methods of proof the necessary intent of defendants might be shown.

"obstruction of coal mining, though it may prevent coal from going into interstate commerce is not a re-

straint of that commerce unless the obstruction to mining is intended to restrain commerce in it, or has necessarily such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred" (259 U. S. 411).

"It is clear from these cases that if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint. Again, it has the power to punish conspiracies in which such practices are part of the plan, to hinder, restrain or monopolize interstate commerce. But in the latter case, the intent to injure, obstruct, or restrain interstate commerce must appear as an obvious consequence of what is to be done, or be shown by direct evidence or other circumstances" (259 U. S. 408).

"If unlawful means had been here used by the National body[1] to unionize mines whose product was important, actually or potentially, in affecting prices in interstate commerce, the evidence in question [showing the general policy of the Union to protect Union operators from open shop competition] would clearly tend to show that that body was guilty of an actionable conspiracy under the Anti-Trust Act" (259 U. S. 409).

Testimony on the Present Record.

As pointed out in the foregoing quotations from the opinion of this Court, the intention of defendants to restrain interstate commerce, an essential to perfect plaintiffs' legal case, could be shown by plaintiffs in any one of several ways:—

By circumstances or declarations of the parties so indicating.

[1]Presumably no mere local motive, or rather no motive other than that on which the "general policy" was based, could be reasonably attributed to the National body. This conclusion apparently made it necessary for this Court to pass on the question as to whether the National had participated in the conspiracy. Otherwise the finding as to no other proof of intent to restrain interstate commerce would have determined the case as to both the District and the National.

By proof that plaintiffs' potential output was so important in its effect on prices and competition in interstate commerce that the destruction thereof would reasonably give rise to an inference of such an intent.

By proof that officers of the National body directly initiated or participated in the conspiracy, this of itself being sufficient to warrant the conclusion that they were actuated by the General Policy.

Notwithstanding the fact that at the second trial plaintiffs offered substantial and competent new testimony, amply sufficient in their view to prove the interstate intent of defendants by each one of the methods of proof above specified, the trial Court refused to submit the case to the jury and directed a verdict in favor of all the defendants.

The testimony in the present record may be divided into three classes.

1. The testimony in the first record.
2. Cumulative testimony to fortify the jury in making findings already supported by competent testimony.
3. New and non-cumulative testimony to support findings hitherto unsupported by competent testimony.

Care must be taken continually to distinguish the second class from the third, for it was apparently a failure so to distinguish that led to the primary error of the Court below.

Every material item of proof offered by plaintiffs in the first trial is to be found in the present record, the former documentary proof being offered and the former witnesses being either recalled or their former testimony read into the record under a stipulation.

As heretofore stated, in the first record the evidence of convention proceedings and discussions with operators showed that there existed what this Court called a "general policy" on the part of the National Union

in the Central Competitive District to press for the unionization of all non-union or open shop mines, as a means of lessening interstate competition for Union operators, and protecting them against cheaper cost open shop coal.

The same evidence is found in the present record, and it is this policy, so found by this Court, which is for sake of brevity referred to herein as the "General Policy."

As introductory to the new evidence that the conspirators did in fact "have in mind interference with interstate commerce and competition" when they destroyed plaintiffs' property and that they were actuated primarily by the General Union Policy to protect Union operators against open shop competition, plaintiffs first introduced a mass of new documentary and oral testimony showing the adoption and application of the General Policy in the Southwest, including District 21.

This new testimony[2] covered the prior actions and declarations of Stewart, Holt, Mullen, McLachlan, Dalrymple, King and the other District 21 officers. It showed that they all not only firmly believed, but also continually preached to the rank and file,[3] that the maintenance of this General Policy was of primary importance to the prosperity and growth of both District 21 and of the National Organization, and that to allow a non-union operation of any considerable size to take root and develop in their midst would inevitably result in the evaporation of the Union in the Southwest.

[2]This testimony is abstracted, with illustrative quotations and complete references to the record, in Appendix A, pp. 18a-45a.

[3]"Did you ever discuss with Mr. Stewart the effect of the non-union mines on the relation of the Union miners and union operators, in connection with competition and the cost of production? A. At every Board meeting we had we generally discussed that proposition; I don't remember when we did not discuss it,"—Hanraty, President of District 21, preceding and succeeding Stewart (Record, p. 501).

"Q. Mr. Hanraty, do you know of Mr. Stewart, or both of you

The printed Convention Proceedings of the Miners and Operators in District 21 (not in the first record) further show that the officers of District 21 had repeatedly promised the Union Operators there, as a basis for the continuance of their relations, to protect the operators against open shop competition.[4]

In this connection plaintiffs also offered a mass of testimony which Judge Pollock rejected,[4a] but of which plaintiffs, in the present stage of the case, are entitled to the full benefit. This rejected evidence showed that for a number of years before 1914 the National Organization had been conducting, on an enormous scale, with much violence and bloodshed, a succession of campaigns in the open shop field in Colorado, the greatest of which was at its climax during April and May, 1914, and the expressed object of which was, by imposing the expensive Union conditions on the operators there, *to increase the price*[5] of their coal in the common markets served by them and the operators in District 21 and the Southwest, for the protection of the latter. To this campaign it ap-

informing the rank and file of District 21 as to the existence of the conditions, that you have described, and as to their effect on the miners' Union in District 21? A. I don't remember a speech I ever made in my life when I was connected with the miners' Union that I did not mention non-union coal taking our markets"—Hanraty, p. 509.

[4]334, 336, 1786; quoted in Appendix A, pp. 23a, 30a, 31a.

[4a]The offers of proof which fully support all the above statements are discussed *infra*, pp. 92-97 in connection with the existence of the nation-wide conspiracy. They were rejected by Judge Pollock on the ground that they would introduce collateral issues. For a summary of the effect of the testimony in the present record as to the scope of the General Policy as carried out in practice by these defendants see Appendix A, p. 16a.

[5]"I (Hanraty) insisted that they be organized in Colorado and Alabama * * * *for the purpose of raising the price* and creating conditions so they could not produce cheap coal, and take our markets from us" (Record, pp. 494-495).

"We [Stewart and Hanraty] brought all the pressure we could on President Mitchell to have Colorado organized * * * *for the purpose of raising the price* in Colorado, so the coal could not come in competition with us" (p. 502; see quotations, Appendix A, pp. 36a, *et seq.*).

peared that District 21 had contributed $10,000 and the services of four "organizers." (1540-1.)

While this testimony might not of itself be regarded as sufficient to show that defendants had the General Policy of the National Body primarily in mind when they destroyed plaintiffs' property, nevertheless it does show that the officers and members of District 21 at this time were themselves active in the execution of this General Policy, and thus brings the General Policy one step nearer to the destruction of plaintiffs' property than appeared on the first record.

The New Testimony Connecting Directly the General Policy with the Local Situation[6] and Showing that Stewart and his Accomplices were in fact Actuated in this Particular Case by an Intent to Restrain Interstate Commerce.[7]

The testimony on this branch of the case is entirely new with the present record. It consists of two classes, both found by this Court to have been lacking in the prior record:—

A. Circumstances indicating the existence of an actual intent to restrain commerce.

B. Declarations of the parties and direct evidence that such was their purpose.

These two classes of testimony will be discussed separately, the "circumstances" being discussed on pages 21-33 and the "declarations and direct evidence" on pages 33-50.

---

[6]"While these Conventions and discussions may reveal a general policy, the circumstances or direct evidence should supply the link between them and the local situation" (259 U. S. 409).

[7]"In the case at bar there is nothing in the circumstances or in the declarations of the parties to indicate that Stewart * * or any of their accomplices had in mind interference with interstate commerce or competition when they entered upon their unlawful combination to break up Bache's plan to carry on his mines with non-union men" (411).

A. CIRCUMSTANCES INDICATING AN INTENT TO RESTRAIN INTERSTATE COMMERCE.

The new "circumstances" brought out at the second trial, indicating the presence of a specific purpose to interfere with interstate commerce, may be subdivided into three groups:—

(1) The direct participation of National President White of itself indicates the predominance of the General Policy as the primary actuating motive.

(2) Plaintiffs' product was so important in affecting prices in interstate commerce that its elimination by defendants indicates an intent thereby to restrain such commerce.

(3) Additional circumstances indicating an actual intent to restrain interstate commerce.

(*a*) Intimidation of the Midland Valley Railroad repair gang.

(*b*) Failure of defendants to molest the little Looper mine, whose interstate shipments were in fact negligible.

(*c*) Independent destruction by defendants of cars actually loaded for interstate shipment.

---

(1) The Direct Participation of National President White of itself Indicates the Predominance of the General Policy as the Primary Actuating Motive.

In the present record it for the first time appears that the destruction of plaintiffs' property was the direct result of a plan conceived and formulated by National President White in collaboration with District President Stewart, the purpose of which White expressly stated was to prevent plaintiff's coal from coming into competition with that of the Union operators and which plan was carried out by their local subordinates pursuant to the express order of President White (950-2, 970-3). See *infra,* pp. 33-37, 73-77.

This new testimony,[9] together with that showing that plaintiffs' potential annual output was more than 2,000,000 tons per annum, brought the present case directly within the following statement by this Court:—

> "If unlawful means had been here used by the National Body to unionize mines whose product was important, actually or potentially,[10] in affecting prices in interstate commerce, the evidence in question [indicating the adoption of the General Policy] would clearly tend to show that that body was guilty of an actionable conspiracy under the Anti-Trust Act" (p. 409).

(2) Plaintiffs' Product was so Important in Affecting Prices in Interstate Commerce that its Destruction by Defendants Indicates an Intent thereby to Restrain such Commerce.

In its prior decision this Court stated that the maximum output of plaintiffs' mines "in most prosperous times could not exceed 5000 tons per week," in other words that this was the aggregate capacity of all the mines. This inference was erroneous, the Court having evidently confused the *daily* with the *weekly* tonnage.

The testimony of Mr. Bache and Mr. Denman in the former record as to the output and capacity of the

[9] 951-2, 971-3. This testimony more fully quoted *infra*, pp. 34-6 in connection with the declarations of the parties showing specific intent and also *infra*, pp. 73-77 in connection with the liability of the National Organization.

[10] White's order in itself specifically indicated that in his judgment Bache's product was most "important" and this in itself would appear sufficient on the question of White's intent, irrespective of its actual importance as shown by the testimony discussed in the following subdivision.

Nor would the significance of this testimony under the present heading appear to depend on White's power to bind the National Organization (also shown by new testimony, see *infra*, p. 80, *et seq.*) since White could not, any more than the National Executive Board, be expected to inject himself into a purely local and private controversy, and the furtherance of the General Policy is the only conceivable motive reasonably attributable to his active participation as National President.

mines covered but *five* of the mines, but was clear and explicit that their aggregate capacity was 5150 tons per working day.[11]

The present testimony covers all *seven* of the mines in plaintiffs' operating group, including the Kali-Inla Mine in Oklahoma, all of which, the testimony showed, it was plaintiffs' purpose to start open shop as soon as the initial attempt got well under way, which fact was known to defendants and so stated in their Official Journal in the next issue after plaintiffs' Arkansas operation started.[12]

This testimony, consisting not only of that of Mr. Bache, but also of Mr. Freeze, the ex-State Mine Inspector and the best obtainable expert on the question, was absolutely uncontradicted and fixed the aggregate *actual* output of the seven mines in 1914 at the rate of 5000 tons per day and their *potential* output, when mining at full capacity, under open shop conditions, at 7500-8000 tons per each working day.[13]

It was further shown that President Stewart and a number of his associates were entirely familiar with the mines, as well as with the distribution of plaintiffs' coal.[14]

The witnesses further testified that the plaintiffs' mines were the second largest group in Arkansas, that

[11]Former record, pp. 664-666, 1941, 1955, 1958, 1967, 1978.

The witnesses at the first trial were speaking of the capacity of the mines under Union conditions, without taking into consideration the great increase in efficiency and production which would be made possible by the abrogation of the restrictive union rules.

The complaint did not, as the Court stated, allege $465,000 as the value of the maximum potential output of the *five* operating mines, but as the minimum actual output of but four of them—see complaint, Record, p. 10.

[12]"The company [Bache-Denman Coal Company] has announced its determination to inaugurate the 'open shop' policy at its six mines in Western Arkansas and Eastern Oklahoma next fall. At present they are closed for the summer." Journal of April 7, 1914, Record, p. 546.

[13]Record, pp. 1110-1116, 1391-1395. This testimony is more fully abstracted in Appendix A, pp. 77a, *et seq.*

[14]Appendix A, pp. 35a, 40a, 43a, *et seq.*

they enjoyed exceptionally favorable physical conditions, second to no mines in the region and equalled by but two, but that in 1914 and for some time prior thereto some of them had been shut down and the balance running (at a loss averaging from 5 to 10 cents per ton) but a few days a week and for a few months of the year, so that the total aggregate *annual* output (as distinguished from the daily output) of all the mines was far less than their potential output or capacity.

This condition the witnesses testified was directly the result of two causes:—

First, the competition of the lower cost open shop mines in the surrounding territory of Colorado, Texas, Alabama and Kentucky, which, with the continual multiplication of the expensive restrictions imposed by the Union, constricted plaintiffs' available markets in an ever narrowing circle, to the point where the freight rates of such open shop mines offset their lower operating cost.[15]

Second, within the circle, the fact that, against plaintiffs' opposition, there had been maintained in the Union agreement with the Southwestern Operators' Association, and in spite of frequent promises by Stewart to remove it,[16] a discriminatory provision permitting plaintiffs' principal competitor, the Central Coal & Coke Company, to work two men in a room, while forbidding plaintiffs to do so, thus putting plaintiffs under a great additional operating disadvantage.[17]

All the foregoing testimony was clear and explicit and the other side made no attempt to contradict it. It throws a new light on that branch of the case, of which this Court obviously did not have the benefit under the testimony in the former record.

[15]See Appendix A, pp. 85a-93a for an explanation of this by the new testimony.

[16]1444-5, see also 1460.

[17]1407, 1115, 499.

Plaintiffs' purpose in operating open shop, as testified at the new trial by Mr. Bache, was to convert his very low annual production of but 400,000 to 500,000 tons into the enormously larger potential production of 8000 tons multiplied by the number of possible working days in the year,—say 250, or a total potential annual output of 2,000,000 tons,—equal to the average annual production of all the mines in Arkansas for the years 1913 and 1914 (1407).

The potentiality, from a competitive standpoint, of plaintiffs' mines is also indicated by another circumstance. From new testimony produced at the second trial it appeared that in 1910 all the mines in the District had been on strike from April to August, the Operators' Association being unable to make a satisfactory contract with the Union. In August Mr. Bache had made a separate contract with the Union.

This action on his part promptly forced all his competitors in District 21 (Arkansas, Oklahoma and Texas) to follow suit and sign up with the Union, since, as one of them testified, if they permitted Bache to operate while they were idle, he would soon deprive them not only of their men, but of their markets and customers.[18]

In its prior decision this Court said that the saving from open shop operation "was stated by plaintiffs' witnesses to be from 17 to 20 cents per ton"[18a] (page 412).

[18]This new testimony is quoted in Appendix A, pp. 114a-115a, 83a.

[18a]This Court perhaps had in mind the statement of the witness Hilling, that the saving by the elimination of but one Union restriction—allowing but one man to work in a room—would reduce the cost by from 15 cents to 20 cents (former record, p. 2301) or perhaps to that of the witness King (former record, p. 2051) that his own cost (at a much smaller mine and under different conditions) had been reduced 17 cents by turning open shop. This Court overlooked Superintendent Cameron's detailed and official estimate of 55.8 cents per ton (former record, p. 720) of which, in view of the verdict in their favor, plaintiffs were entitled to the benefit. This estimate of Cameron's contemplated only the saving on actual operating cost and did not include the additional saving in overhead due to increased tonnage.

The uncontradicted testimony of the witnesses who testified at the second trial, two of the best independent experts obtainable, was that, without any general wage reduction, the saving from the elimination of the restrictive Union rules at plaintiffs' mines, without any increase in tonnage, would result in an initial saving in cost of from 25 cents to 40 cents per ton, and that the increase in tonnage and consequent reduction of overhead cost per ton resultant therefrom would bring about an equal additional saving, or a total saving in cost of 50 cents to 80 cents[19] per ton out of an aggregate operating cost of $1.75.

The former record contained no expert testimony as to the effect of the competition of the lower cost open shop mines in the districts surrounding plaintiffs' mines, in restricting plaintiffs' markets inside an ever tightening circle, bordered by the point where the increasing freight rates of the open shop mines overcame their lower cost of production. Such testimony was supplied at the new trial by disinterested experts. They made it clear why an open shop mine, starting in the midst of District 21, and unhampered by having to pay high freight rates from distant points of production, could at once have used its 50-80 cent operating advantage to put all its Union competitors out of business,[19a] unless they too turned open shop.

At the new trial plaintiffs' sales agent, a man of very wide experience in selling coal in the competitive markets available to the operators of District No. 21, testified, without attempted contradiction, that a re-

[19]See abstract of this testimony, Appendix A, pp. 83a-84a.
In Appendix B are summarized the 15 factors detailed by the witnesses as responsible for this large saving in cost of production.

[19a]See Appendix A, p. 85a, *et seq.*

duction in price of plaintiffs' coal of 25 cents per ton would have trebled plaintiffs' output, and have enabled plaintiffs to have sold their *maximum potential output* before their competitors sold any coal whatever.[20]

As shown by testimony offered at the second trial, plaintiffs' regular markets included points in Oklahoma, Texas, Kansas, Missouri, Nebraska, Minnesota and other States, from 75 per cent. to 86 per cent. of its coal going out of Arkansas,[21] and it had a recognized good will in such states.[22]

It also appeared that 85 per cent. of the coal mined by plaintiffs' competitors in the Hartford Valley was marketed in other States (1021).

On the original record this Court said:—

"Nor could it be inferred that Bache intended to cut the price of coal. His purpose was probably to pocket the profit that such a reduction made possible" (259 U. S. 412).

At the second trial Mr. Bache testified that it was his purpose to cut his price sufficient to enable him to sell his entire potential output.[23] According to the expert testimony above referred to, this would have enabled him (by reducing his overhead) to reap a much greater aggregate profit on the increased tonnage which he could have commanded, than if he had merely pocketed the saving in production cost on his previous smaller tonnage.

---

[20]See Appendix A, p. 93a. There was no such testimony in the first record.

[21]See Appendix A, pp. 93a-98a.

[22]We fully recognize that the above circumstance would not, of itself be sufficient to give use to a presumptive intent by defendants, see Leather Workers *vs.* Herkert, U. S. Adv. 1923-4 p. 705. It is, however, entitled to consideration in connection with the other testimony as to the existence of an *actual* intent.

[23]See Appendix A, p. 98a.

3. Additional Circumstances Indicating an Actual Intent to Interfere with Interstate Commerce.

Prior to discussing the three new circumstances of the above character brought out at the second trial, we may refer to another circumstance, which, though apparent at the first trial, was evidently not considered by the Court as of itself sufficient to warrant the necessary finding of intent, but which is certainly entitled to weight in connection with the additional testimony now forthcoming.

This is the coincidence of each of the attacks with plaintiffs' readiness to ship coal.

At the time of the Riot of April 6th, when 2000 Union men attacked the mines, assaulted and drove off the men, stopped the pumps, and allowed the mines to fill with water, plaintiffs were just ready to ship their first car of open shop coal (1446).

In May, after most of the water had been pumped out and the company practically ready to hoist coal, the men were again driven off and the mines again filled up with water (948, 1379-80).

A few days before July 17, all the water had again been pumped out and the mines were again ready to ship coal. In fact, some seven cars were loaded and ready for shipment. This was when the principal attack occurred and the properties were destroyed.

Immediately before this principal attack, a number of the conspirators had expressly stated that such destruction would not occur until plaintiffs were so ready to ship coal (*infra,* pp. 35, 40, 44-5, 47, 48).

President White himself instructed McNamara and Slankard to precipitate the attack at this moment (971).

Even later in the same year, on October 28th, still another attack was made just as soon as plaintiffs started loading coal from a strip pit which, be-

cause of its physical nature, had not been destroyed on July 17th.[24]

(a) *Intimidation of Midland Valley Railroad Repair Gang.*

The Midland Valley Railroad, which served the Prairie Creek Mine, reached no coal consuming point in Arkansas except after a journey through Oklahoma, which fact did not appear in the first record. Every shipment of coal over this railroad was therefore an interstate shipment.[25]

The track repair foreman of this road testified that when No. 4 mine was about ready to ship coal he and his gang got orders to repair the switch track into this mine. As they were starting to do so a number of Union miners accosted them roughly asking him "if I was going to repair them tracks to haul the scab coal out over" and telling him he would never do it and that "There will never one car of scab coal go out over this track."[26]

This prediction was fulfilled.

(b) *Failure to Molest Little Looper Mine.*

O. T. Looper was one of the four employees who were badly beaten up by defendants on April 6th.

Before he took his job as engineer for the Bache-Denman Company, he had operated a small open shop mine of his own three-quarters of a mile away, employing never more than 12 men.

He testified that although his men were occasionally visited and talked to by the Union men, neither he nor they were ever seriously molested, it being, to his personal knowledge, the settled policy of the Union not to interfere with small mines of this size.[27]

---

[24]Atkinson, 1231; J. Shaleen, 1381; C. Shaleen, 1235; Cole, 1155; Bache, 1454; see also Rankin, 879, for conclusive admissions that this was the work of the Union.

[25]See Hanley *vs.* R. R. Co., 187 U. S. 617.

[26]Holloman 1010. See testimony quoted, Appendix A, p. 69a.

[27]687-688; quoted, Appendix A, p. 74a.

The jury might properly have found that the reason for this was that such mines served only the local market and their product did not and could not affect the Union operators in other States.[28]

This circumstance did not appear in the first record.

(c) *The Independent Destruction of the Cars loaded with Coal for Shipment to Other States.*

On the proof in the former record as to the above, this Court said:—

> "The circumstance that a car loaded with coal and billed to a town in Louisiana was burned by the conspirators has no significance upon this head. The car had been used in the battle by some of Bache's men for defense. It offered protection and its burning was only a part of the general destruction" (259 U. S. 411).

The proof at the present trial relative to the destruction of this car, together with two others, and as to rescue of four other loaded cars from a similar fate, included material facts in addition to those in the former Record, on which the above inference was based.

Such new testimony showed that none of these cars caught fire during the battle or as part of the general destruction; that they were so separated as to have made it impossible for them to have been ignited from any building or all from one another, that they were intact when the last of plaintiffs' employees left the property and so must have been the subject of a number of independent ignitions by defendants, after the Union men were in undisputed possession of the property.

It further appeared at the new trial that all these

[28] Judge Pollock observed that if plaintiffs had given a bond to ship no coal interstate, defendants would still have destroyed them. Was the jury bound so to conclude, in view of the above circumstance, and of the admitted fact that plaintiffs could not have survived bankruptcy on their local business? (1409.) Would not defendants in such case have merely waited for the latter event? (Compare their attitude while plaintiffs were pumping out the water; see 765.)

seven loaded cars were on the Midland Valley tracks which led to no coal consuming points in Arkansas, so that the interstate status did not apply merely to the one whose billing to Louisiana appeared in the first record.[29]

It is not our contention that if these cars had caught fire from the buildings, this circumstance of itself would convert the conspiracy into one in restraint of interstate commerce, merely because these cars were actually in interstate transit. The mere destruction of such a minor instrumentality of commerce might be considered insignificant compared to the wholesale destruction of non-instrumentalities simultaneously effected.

Our position is that the destruction of these cars, after all the non-union men had left the property, now appears to be consistent only with a specific purpose on the part of the conspirators to prevent every pound of open shop coal from leaving the Hartford Valley for the interstate markets of the Union operators to which the Midland Valley Tracks led.

Our reliance on the destruction of these seven loaded cars is not as giving rise *of itself* to an *imputed* intent because they were actually in interstate commerce, but as *one of a number* of circumstances which the jury might regard as indicating the existence of an *actual* intent to restrain commerce, dominating the entire attack and conspiracy.

The destruction of these cars plays the same part in this case as does the attempt to destroy the interstate railroad bridge in the case of United Mine Workers vs. Penna. Mining Co., 300 Fed. 965, 970, 971, argued and decided by the Circuit Court of Appeals on the same day as the case at bar, and is tangible evidence of another step in the same nation-wide conspiracy con-

[29]Appendix A, pp. 72a-74a.

ducted for the same unlawful purpose and by the same unlawful methods.[30] Neither the destruction of the cars nor the attempt to destroy the bridge was of itself the *basis* for the suit or for Federal jurisdiction, but each was an *evidential fact* as to the existence of a *specific purpose* on the part of the conspirators to prevent the open shop coal going to the adjoining States.

From the foregoing testimony the following circumstances appear, each of which, it is submitted, indicates that "Stewart and his accomplices" had in mind interference with interstate competition when they destroyed plaintiffs' property:—

The plan to destroy plaintiffs' property was originated and put in effect by the President of the National Body, whose only conceivable object in interfering with plaintiffs was to carry out the General Policy to protect Union operators against the competition of open shop coal.

The properties which defendants destroyed were known to them to have a potentiality in interstate competition sufficient, if left unchecked, to have disrupted prices in the interstate markets of the Union operators and to have caused the ultimate progressive defection of all the Union operators in the Southwest.

Defendants timed each of the attacks on the properties with plaintiffs' readiness to ship coal.

Defendants' policy did not call for attacks on open shop mines having no interstate potentiality.

Defendants threatened the railroad gang repairing the interstate railroad tracks leading to plaintiffs' mines,

[30]It was of this proposed attack on the open shop operation of the Pennsylvania Mining Company at Jamestown, Ark., that Charlie Pattie (the Union miner who set fire to plaintiffs' No. 3 tipple) told witness English Dougherty, one of the miners, whom plaintiffs had brought from Tennessee. This conversation took place after the Union men captured Dougherty and his fellow Tennesseans and held them prisoners in the Union Hall at Hartford (591).

in order to prevent shipment of plaintiffs' coal over such tracks.

Defendants deliberately and independently destroyed cars loaded with coal for interstate shipment after all the non-union men had left and when defendants were in absolute control of the property.

B. DIRECT TESTIMONY AND DECLARATIONS BY THE PARTIES SHOWING SPECIFIC INTENT.

At the first trial, by reason of the strong Union sentiment in the community and the recentness of the events, it was found most difficult to secure testimony on the pivotal questions. At the time of the second trial, however, it was found that many of the witnesses had moved to other localities and that, owing to this, to the lapse of nine years, and to a certain change in sentiment, direct testimony was obtainable which before was impossible.

Direct Testimony of J. K. McNamara.

The local leader of the Union in the whole affair was James K. McNamara, whose testimony was secured for the first time at the second trial.

McNamara was Secretary of the Local Union at Hartford, where he was employed in one of the mines of Central Coal & Coke Company, plaintiffs' principal competitor. His testimony is found at pages 935-980 of the record. It describes how the conspiracy was originated by National President John P. White, and tells what was its primary and controlling object.[32a]

[32a] McNamara's testimony also supplies illuminating details as to a number of important events, such as the shooting up of Frogtown by the Union men in order to bring on and justify the attack; the framing in advance of the talk of peace and no violence to "camouflage the public," as part of the regular Union program "practiced all over the country" in campaigns against open shop mines; the purchase and distribution by the Union officers of 400 high powered rifles, the recruiting and marshalling of the Union army for the attack, the murder in cold blood of two of plaintiffs' employees, etc.

During the hearing on the permanent injunction (May 4th-8th) McNamara had come to Fort Smith to get money from President Stewart[31] to carry on the fight against plaintiffs and found Stewart ill and in his night clothes. After exchanging greetings "he (Stewart) said he had something to tell me, that he had been up to Kansas City and had a talk with White, and he said that they had **arranged a plan up there** to prevent Bache from producing coal. * * *" (950.)

"He said Mr. White told him he would be over there pretty soon and 'wanted to see youse,' that is the way he said it, Pete is Scotch and that is the way he said it."

The occasion of White's proposed visit was the District 21 Convention held at Fort Smith during the week of May 18-23 for the purpose of determining District Secretary Holt's guilt or innocence of the bribery charges which had been disclosed in the legal proceedings at Kansas City which had previously been instituted by Bache against his principal competitor, in the course of which it had come out that Holt and another Union man had been paid $10,000 each to secure the Union contract, which perpetuated to such competitor the dis-

[31]Stewart was in constant touch with McNamara, knew all that was going on from beginning to end and approved the destruction, in unqualified terms after it was over.

"Q. Was he (Stewart) frequently down in that country during these three months. A. Yes, sir.

Q. Did he know everything that was going on? A. Yes, sir.

Q. Did you report to him? A. Quite a number of times." (946, see also 947.)

"I realized in the very near future we were going to do what we did, and we wanted to leave the impression with everybody possible that the district organization had nothing to do with it.

Q. Had you thought of that yourself? A. We had talked about that quite often, Stewart and I (967).

* * * * * * *

"Stewart first done some talking and he asked us (McNamara and Slankard) in detail of the trouble and we told him briefly and he said 'That is the best piece of work I ever heard of being done in my life.' He said 'I congratulate you'" (958). [The day after the battle of July 17.]

criminatory provision permitting him two men in a room and refusing this to Mr. Bache.[32]

On the second morning of the Convention, Slankard met McNamara in the Convention Hall and told him that White wanted to see them at his hotel during the noon recess.[33]

They accordingly went to the Hotel, and White soon came in and nodded to them to follow him up in the elevator, which they did.

When they reached the parlor White shook hands with them and asked how things were and being told by McNamara that "things are a little watery in Prairie Creek No. 4 yet," White said that he had been "informed" on that by Stewart, to whom he had been "talking about the Bache-Denman trouble."

White then said to McNamara and Slankard:—

"Stewart told me that they cannot get enough men to operate the mine. He said 'if they do that, *we must prevent that coal from getting into the market*' * * * 'because **if Bache coal, scab-dug coal got into the market it would only be a matter of time until every Union operator in that country would have to close down his mine or scab it, because the Union operators could not meet Bache competition.**'" * * *

"'When you go back to Hartford' he said, 'I want you to tell the men what I have told you, but don't tell them I have told you.'" * * *

"He told us to tell the men not to do anything until Bache began producing coal, and **then it was time to act,** or words to that effect." * * *

"Mr. White when he rose up to go, said:

"'Now you boys will not lose a day, and your expenses will be paid for every day you are in this trouble.'"[34]

---

[32]It was on learning of this that Mr. Bache finally decided to turn open shop and it was this to which White referred in his speech to the Executive Board on May 4th (quoted by this Court in its opinion) although in the absence of the new testimony in the present record, the significance of this passage was not then apparent (983-4).

[33]951-2, 968-974.

[34]McNamara, 951-2, 971-3.

White then told them not to come down with him but to follow on the next elevator. "He impressed me that he didn't want nobody to see us together."[35]

McNamara further testified that, pursuant to White's instructions, he and his fellows in fact waited, as White had directed, for the final attack, until plaintiffs had the mine fully manned and the water pumped, and were ready to ship coal, and that they then attacked and destroyed the property.

"Q. What was the circumstance that you were watching for to start the battle of July 17th?

"A. When he started shipping coal" (964-5; see also 2166).

It is submitted that a fair summary of the foregoing testimony is as follows:—

That White, President of the National organization, instructed his local subordinates to use all necessary means to prevent plaintiffs' open shop coal going to the markets of the Central Coal & Coke Company, and the other Union Operators, 85 per cent. of which markets they knew were in other States; that when such shipments became imminent, following White's instructions, they destroyed plaintiffs' property for the reasons White had given.

The materiality of the above testimony, as showing the primary purpose of the conspirators to interfere with interstate commerce and competition, is not dependent on White's authority to bind the National body or to issue instructions to his local subordinates, since the jury would be warranted in finding from the testimony that McNamara and his accomplices *in fact* followed White's directions for the reasons and purposes stated by him.

[35] 972. White's secrecy was evidently prompted by the existence of the injunction which Judge Youmans had made permanent ten days before.

After the meeting with White, McNamara went back and he and his lieutenants carried out White's instruction by spreading up and down the Hartford Valley the fact that Bache must not be allowed to ship coal, repeating to the men the reasons given by White and the danger to the Union in permitting plaintiffs' coal to reach the Union markets.[36]

To United Mine Workers this was no new doctrine and its dissemination, at White's direction, by McNamara and his lieutenants, merely fortified what not only the officers, but the rank and file as well, had for years been taught as the basic creed of the organization, in debates, in Joint Conventions of Miners and Operators, by speeches of National and District Officials, and by Articles in the United Mine Workers Journal.[37]

Declarations by Defendants as to their Intention in Destroying Plaintiffs' Property.

During May, June and July and right up to the destruction of the property during the Battle of July 17, this matter was continuously discussed "everywhere and all the time," not only in Hartford, but also in Huntingdon and Midland. "It was the burning question."[38]

A dozen new witnesses, residents of these places, testified that during the Bache-Denman open shop attempt they heard the Union men repeatedly state as they met in groups on the street or at the country store, that they did not care how long plaintiffs pumped water, but that they would not permit the shipment of coal, since this would result in the Union operators being undersold in the competitive markets in other States named and being forced either to close down or to go open shop.

The witnesses heard the Union men name the specific

[36]952, 971.
[37]Appendix A, pp. 18a-45a.
[38]Dr. Routh, 841-843.

interstate markets *into which they thus feared plaintiffs' coal would go;* they **"talked about how long it took the cars to get back. * * * They said they couldn't never let that coal go down there * * * that it would affect the Union mines in Arkansas * * * the Central mines."**[39]

Included among the men identified by the witnesses as making the above statements were ten of the defendants in this case, including the principal actors in the intimidation of plaintiffs' men and the destruction of their property. The speakers also included Stewart, Holt, McLachlan and the other members of the District Executive Board, whom the witness, Dr. Routh, heard discussing this matter at the Davis Hotel in Hartford when the Board was meeting there to settle a local dispute.[40]

Hartford was a town of about 2300 inhabitants situated two miles south of Prairie Creek. Midland, 2000, was three miles north. Huntingdon, 2000, was four to five miles east.

The population of all these towns consisted admittedly of Union miners and their families, and persons dependent on them for their livelihood.

Most of the men in these three towns were employees of plaintiffs' principal competitor, the Central Coal & Coke Co., which had mines at each of the three points, 85 per cent. of whose coal was sold in the interstate markets served by plaintiffs (1021).

The following extracts from the testimony are illustrative of the declarations of the parties showing intent:

WM. B. THAREL (1013-1016):—

Storekeeper at Midland in 1914—now living at Drumright, Oklahoma.

[39]Tharel, 1014-1015. The point of this testimony, which Judge Kenyon apparently failed to grasp, was not the fact that defendants talked of plaintiffs' foreign markets, but that they feared and intended to prevent plaintiffs' coal from competing with Union mined coal in such markets.

[40]843-4, 848-9.

"Q. Did you ever hear the Union miners discussing the market reached by the Bache-Denman Company, where they sold their coal? A. Yes, sir, I heard them mention about that.

Q. Tell us what you heard discussed by Union miners at or before July, 1914.

THE COURT:—Let us hear what was said between these parties.

Q. Tell what they said. A. I heard the miners—

THE COURT:—Where was it? Who was it? When was it? A. That was at Midland, Arkansas.

Q. When? A. The year 1914, if I remember right.

Q. Who were talking? A. Abe Cunningham, Bill Price, Tom Watson, Maje Hulsey.[41]

Q. These were Union miners? A. Yes, sir.

MR. DRINKER:—Jess Griffin? A. Yes, sir.

Q. Any others? Tell what was said on that subject. A. **They was talking about the Bache-Denman Company would ship coal into the foreign markets, taking the place of Union coal.**

Q. Did they say where the Bache-Denman shipped? A. **They mentioned several markets.** They mentioned some place way off in Wyoming, I believe, **talked about how long it took the cars to get back.**

Q. **Did they mention any northern markets?** A. I believe they did.

Q. What? A. **I believe Minnesota.**

Q. Minnesota? A. Yes, sir.

THE COURT:—See if he can state what they said, if anything.

Q. What, if anything, did they say anything about Bache-Denman shipping to Minnesota? A. **Well, they said they couldn't never let that coal go down there, that it would affect the Union mines in Arkansas.**

Q. What Union mines? A. Well, in Arkansas, the Central Mines.

Q. Did you hear any discussion about Bache pumping water? A. Yes, sir.

---

[41]Price, Watson and both Hulseys are defendants in the present case; see caption, Record, p. 2.

Griffin is one of the participants named in answer to the order to make the complaint more definite and certain; see Record, p. 25.

Q. What did they say about that? A. They didn't seem to care how much water he pumped, **just so he didn't ship any coal** (1014-1016).

* * * * * * * *

Q. Did you hear them discuss the houses, the Bache houses and what was being done with them, during that open shop time? A. Yes, sir.

Q. What did you hear them say about that? A. I heard them say that the Bache-Denman Company had taken some of the Union men and moved them from one camp to another, in order to make room for the non-union miners, something to that effect.

Q. Did you ever hear anybody talking about the Bache-Denman employes, the union miners, being put out of their houses and not having any place to live? A. No, sir (1016).

Cross Examination (in full).

By Mr. Warrum:

Q. **You heard these discussions among the miners, the local miners, as they gathered around the store?** A. **Yes, sir.**

Q. But you never heard them say that Bache or his company had broken his contract that they had with the local, to work the union scale until July, 1914? A. I never heard anything about the contract being broke.

Q. They never complained of that at all? A. I don't remember it, no, sir.

Q. What? A. I don't remember hearing them say anything of that kind" (1016).

Dr. H. P. Routh (840-849).

Lived and practiced medicine at Hartford 1909-1916; now at Tulsa, Oklahoma, where his deposition was taken.

"Q. Did you hear during the spring of 1914 any discussion in Hartford relative to the Bache-Denman Company's operation? A. Yes, that was the year that they tried to operate open shop and there was unlimited discussion about it. You could hear it on

all sides and every day. It was a perpetual thing and everybody was discussing it. It was discussed by everybody because it affected everybody's business—mine as well as everyone's elses,—as to whether or not the mines operated. It brought on a crisis. It naturally affected everybody.

Q. Was there discussion that you heard as to what the miners believed and stated would be the effect if Bache-Denman got started open shop and was allowed and permitted to operate that way? A. Well, it would naturally, **if Bache-Denman were going to operate open shop it would force the other mines to attempt it in order to compete with it was the consensus of opinion of the organized miners** that they were going to try to produce cheaper coal than could be produced by Union miners; in other words, it was an attempt to change the scale; that is the way I understood it.

Q. Was there discussion by the miners as to what if any effect it would have on the relations between the Union and the other operators in that district, Number 21? A. **Well their idea was, too;** that is, **it was the opinion** that it would give Bache-Denman an advantage over the other mines if they had to adhere strictly to the Union contract and Bache-Denman were producing cheaper coal. **The others would be working at a loss and the others would have to shut down if they could not operate open shop as Bache-Denman were, and if they were forced to operate under the existing contract they could not sell coal as cheap as Bache-Denman they would operate at a loss.**

Q. Now, were the questions covered by your last two answers discussed in your presence by Union miners? A. Yes, I talked to and heard them—**they were discussed everywhere and all the time. It was the burning question.** Naturally as I stated before, it was a crisis in the community. People had their personal ideas about it. They had property there and everybody was interested. It was a very prominent question and discussed very prominently.

Q. Do you remember any particular time when you heard a discussion of that matter at the Davis Hotel? * * * A. Yes, sir. I was at the Davis Hotel on a

certain occasion **when the District Board** was down there relative——

Q. District Board of what? A. **District Number 21.**

Q. Yes. A. The District Board was down there to settle some matters at Central No. 4. I was at that time boarding at the Davis Hotel.

Q. And did you hear any conversation in which the Board members, the members of the District Board,[42] District 21 participated, and heard same as to these matters, at that time? A. Yes, sir, **they were discussing that matter at this time,** and they were——

Q. What matter? A. The matter of this non-union——

Q. Bache-Denman operations? A. Yes, sir, it was during this time and it was just a general discussion in which there was possibly eight or ten taking part. They had had a meeting that day and **they were just discussing the effect it would have on the price of coal in Arkansas and Alabama and other places as to whether they could meet the price or not.**

Q. **And do you remember anything else as to the substance of that discussion?** A. Well, the only thing, I think I answered that before, was that if Bache-Denman were going to operate that way the others were going to operate that way if it could be done—**the others were going to follow suit** (841-844).

Q. Did you know Jim Slankard? A. Yes, sir.

Q. Nick Geiss? A. Yes, sir.

Q. Did you ever hear them discuss the matters to which you have referred in your several answers, prior to July 17, 1914, relative to the several questions I have put to you? A. Yes, sir" (846).

* * * * * * * *

"Q. Did you ever hear any discussion by either of these men as to the effect of Bache-Denman getting started open shop on the other mines and the relations of the Union with them? A. Yes, **they all said that if Bache and Denman made a success of working open shop that the Central Coal & Coke Company would**

[42]The members of the Board at this time included Stewart, Holt, McLachlan, Sparling, Dalrymple and Tasso. They were Stewart, Holt and his principal "accomplices."

follow; that was the belief of the Union miners. You could get that from any source because it was just generally discussed that they believed that the Central Coal & Coke Company would follow suit right away because they worked more men than any one else there.

Q. Do I understand that you mean by your answer that **Jim Slankard and Nick Geiss** were two of the people that discussed this thing with you when you said they all did; did you include them? A. **Yes, sir; I have talked to them specifically.** I wanted to know. I asked questions. I have gone down into the mines to see what they were doing and was familiar with the operations and the men.

Q. And you discussed that same thing with many other miners than Geiss and Slankard? A. Yes, sir. **I told you I think that was every miner's opinion. I think all of them were of that same opinion"** (846-847). * * *

Cross Examination.

By MR. WARRUM:

Q. **And you recalled the statements made by the District Board at the Davis Hotel back in 1914?** A. Yes, sir; that was rather an accident, because——

Q. You have a recollection for a number of things they said * * * A. Yes, sir, because **I remember this incident about having the house burnt down, and I know we had a time getting a place to stay because of this meeting being on there and I went over to the hotel and they were crowded and we had a great time getting a place to sleep"** (848-849).

T. F. LINGO (1028-1036).

In the insurance business at Hartford 1912-1915; now at Tulsa, Oklahoma, where his deposition was taken.

"Q. State whether or not during the spring and summer of 1914 you heard the union miners at Hartford discuss what would be the effect on the union operators if the Bache-Denman mines got started and run open shop? And if so, state the substance of that discussion. A. Well, if the Bache & Denman ran open shops, it would not be long before the other

companies would want to run open shop and they were not going to let them run except closed.

Q. You mean that what you have just stated was the substance of what these men said in your presence? A. It has been so long ago now that I can't probably recall any one person, but it was the general talk all over town in the town of Hartford.

Q. What was? A. That they were not going to let Bache & Denman run open shop.

Q. Were any reasons given in this talk as to why they would not let the Bache & Denman run open shop with non-union labor? I mean the talk by the persons at the times and at the places we have been referring to in Hartford in 1914, by the union miners. A. **It would have been on account of they could have produced it and sold it cheaper than the union operators,** and on account they were in fear of these other companies would want to run open shop if they let them.

Q. When you say these other companies, what do you mean? A. Central Coal & Coke Co. is the one company of any size that amounts to anything.

Q. Were any of the other companies except the Bache-Denman mines using any non-union labor? A. No, sir.

Q. They were all employing union labor exclusively? A. Yes, sir." (1030-1031.)

O. A. Brooke (874-879).

Resident of Hartford 1909-1920, in the banking business, identified as present at the Riot of April 6th, and hence made a defendant herein.

"Q. During this same period that I have already discussed, did you observe and hear the miners engaged in discussions regarding the attempt being made by Bache-Denman Coal Company to work open shop, if so, give the substance of such discussions." (875.)

* * * * * * *

"A. It seems that they didn't have any objections to hoisting water.

Q. What were their objections as shown by their discussion? A. Didn't want them to mine the coal.

Q. Was anything said by the miners in their discussions during this period as to the effect on the Union if they were permitted to ship coal, as distinguished from merely hoisting water, if so, state substance? A. **It seems that there was no objection as to the hoisting of water, but objected to mining coal** (876).

ELMER BOHANNON (1049).

Operated a Union mine at Hartford in 1914. None of his men reported for work April 6th or July 17th.

"Q. Will you state what the Union miners working at your mine were discussing during the period betwen April 6th and July 17th, 1914, with reference to the situation at Prairie Creek No. 4?

MR. WARRUM:—The defendants renew their objection.

THE COURT:—It is merely cumulative, but he can answer.

Q. Do you understand the question? A. What they would be discussing between the two periods, the 6th and the 17th?

Q. Yes. A. **Well I have heard them often say they would not allow scab coal to leave the Hartford field.** (1052.)

T. A. HALL[43] (864-867):—

Lived at Hartford 1909-1922, in the livery business, came in contact with and knew a great many of the people of the town. The 1914 census showed 2317 people, 90 per cent. of the men were Union miners.

"Q. Now in the town of Hartford at that time was there much discussion amongst the miners as to mining conditions and mining matters? A. Well, during the time of that trouble there was quite a lot of discussion * * *.

[43]Mr. Hall went on one of the bonds in connection with the indictments of the Union men in connection with this affair. Since 1914 he had been a member of the Union. (866-867.)

Q. Did you hear that matter discussed amongst the miners? A. Well, I—when they tried to operate these mines over there that was the general discussion of the people over there. Everybody was interested directly in the way the mines were operated.

A. And that was discussed? A. Yes, sir.

Q. Frequently or infrequently? You mean it was discussed all the——A. They didn't talk all the time—of course they slept and eat—but it was * * *

Q. It was the frequent discussion? A. Yes, sir, it affected everybody" (865-6).

* * * * * * *

* * * **everybody knew that had any sense that if Bache-Denman ran open shop there it would eventually put the other people out of business** because they would have to follow suit" (866).

JAKE RITCHIE (702).

Was a charter member of the U. M. W. A. at Huntington. At local meetings the open shop was discussed.

"They didn't want the open shops to work, and wanted people to join the Union."

"Q. They wanted the open shops to join the Union? A. Yes, sir, they didn't want them to work.

Q. Did they say why they wanted them to join the Union? A. Well, to keep all such coal as that off the market so this Union coal could go on the market would be **the biggest object.**

Q. That is, to keep the open shop coal off the market? A. Yes, sir." (703.)

G. W. SKOW (769).

In 1914 was General Manager of Electric Company at Huntington which supplied Bache-Denman with power. During April to July was frequently called on to repair breaks in high tension line that could not have been caused by accident. Attended meetings in Huntington the purpose of which was to induce his company to cut off the power and was visited by a committee of Union men for the same object.

"Q. Did you hear, during this period, any conversation by Union miners in Huntington, relative to the open shop operation of the Bache-Denman Company, at that time?

A. That is about all that was talked about in Huntington among the miners and everybody else.

THE COURT:—What did they say?

A. I don't remember all they said, but I remember distinctly that remarks were made on several occasions that as long,—no, **as soon as they started hoisting coal the fun will begin"** (772-773).

F. J. HOLLOMAN (1008-1013).

Lived in Midland in 1914, was Section foreman for Midland Valley Railroad his district covering the switch track into plaintiffs' Prairie Creek No. 4 Mine.[44]

"Q. Now, Mr. Holloman, you came in contact with the Union Miners around there a good deal, did you not? A. Very often (1011).

* * * * * * *

Q. Did you hear discussion there as to what the miners considered would be the effect on the union if Bache-Denman got started open shop? A. Yes, sir.

Q. What was that?

THE COURT:—Who was it?

Q. By union miners? A. Yes, sir.

Q. What was it? A. Yes, sir, they said they could produce coal cheaper than they did, because the Central Coal & Coke Company, they called it then, I believe, the big concern, grew up that way. **It would throw them out of work. Consequently they would all become open shop mines"** (1013).

A. W. MCGEE (763).

Drug store keeper at Midland in 1907-1915.

About 85% of the men in Midland were Union miners most of whom worked at No. 6 mine of the Central Coal

[44]See *supra*, p. 29 hereof, for his testimony relative to Union threats against his repairing this track.

& Coke Company. Knew Mage and Marion Hulsey, Union miners, named as defendants herein (765).

"Q. Did you ever hear any conversation by either of the Hulseys about the company hoisting, the Bache-Denman Company hoisting water, this conversation being about the time that they were running open shop? A. Yes, sir, Mage Hulsey, made a remark in the store, as I remember, that they were hoisting a little water, and it would break the company up the way they were getting it out.

Q. Did he say anything about the company shipping coal? A. **He said they would never ship any coal from there** (765).

* * * * * * *

Q. Did you ever hear any statement by the men that worked at No. 6 Central as to whether or not they were in favor of Bache-Denman working open shop? A. No, sir, there was none of them in favor of open shop.

Q. Did the men who worked at No. 6 Central say why they did not want Bache-Denman to work open shop? A. They said if they worked open shop they would all be working open shop around.

Q. Did they say why that would be? A. **They said if they let that mine down there work open shop they would all be working open shop in a few days.**

Q. All these men who talked and expressed themselves against the Bache-Denman Company working open shop, were most of those men who had worked in the Bache-Denman Mine or men who worked in other mines? A. **Men who worked in other mines"** (767-768).

J. L. FINNEY (836-840).

Was a charter member of a Local Union in 1895 before the organization of District 21 in Huntingdon, five miles from Prairie Creek, and lived in Huntingdon through 1914. Population of Huntingdon was then 1700, 80% miners and the balance dependent on mining trade.

Most of the miners worked for the Central Coal & Coke Company.

The open shop attempt of Bache-Denman in 1914 was talked of in Huntingdon "very much," "by practically everybody." "I heard it on the street."

"Q. State what that discussion was. A. The discussion was generally on the subject of working open shop.

Q. And what was said about that? A. The union miners said they were not going to permit it.

Q. Did they state why? A. Yes, sir.

Q. **Did the men who worked for the Central Coal & Coke Company mines state why?** A. They said if they allowed the Bache-Denman mines to run open shop it would be but a short time until they would all be open shop.

Q. Did they say how that would come about? A. **It would come about through the coal being produced for a cheaper price, and would hinder them in making future contracts.**

Q. Future contracts with whom? A. With the operators.

Q. With what operators? A. The Central Coal & Coke Company for one. The operators I don't think, at that time were organized in an Association like they are now, but they made contracts with the different operators. In 1914 I believe they were. Yes, in 1914 the Southwestern Inter-state Coal Operators' Association was functioning, and they made their contracts through the operators' association in joint conferences, and they said it would hinder them in making their contracts, so they wouldn't get as good terms, and consequently the operators would employ non-union miners.

Q. What operators would employ non-union miners? A. **All the operators in the district, eventually.**

Q. Did they say what would happen to them? A. Well, they said that they would have to get out and go somewhere else where there were union mines and find employment; that they wouldn't work open shop or non-union.

Q. That was the employes of the Central Coal & Coke Company that you are talking about? A. Yes, sir, the union men at Huntington, generally.

Q. Was anything said by them about the shipment of coal by the Bache-Denman Company? If so, state what. A. **Well, they said they would not permit that non-union to go onto the market in competition with union coal.**

Q. Did these conversations in Huntington occur a few times or many times? A. Many times. It was discussed every day.

Q. During that period? A. Yes, sir, during the period of that non-union work at No. 4.

Q. You have heard that yourself? A. Yes, sir." (838-839.)

The Most Active Conspirators were Men Who Were Not Plaintiffs' Former Employees.

It is noticeable that, entirely independent of White and Stewart, the most active local conspirators were not former Bache-Denman employees, but men who worked for plaintiffs' principal competitor, the Central Coal and Coke Company, whose business plaintiffs' open shop shipments would most seriously affect.

McNamara was checkweighman at Central Coal & Coke Company's No. 4 mine.[46] Slankard was fire boss at one of the Central mines at Hartford.[47] Charlie Pattie, who secured the dynamite and blew up plaintiffs' No. 3 slope, worked for the Bolen-Darnell Company.[47a]

If the then President of the Central Coal & Coke Company, had given the order to McNamara and Slankard to destroy plaintiffs' mines for the same reasons given by White, could there be the least doubt of his company's liability under the Anti-Trust Act, or could a plausible argument be made that the jury would not be warranted in finding that his *primary* purpose

[46] 935.

[47] 684-5; see also 624, 947; also Dougherty, 590; Parrish, 903, 905; Green, 1215, as to the participation in the battle and many Union miners from Oklahoma.

[47a] 947.

and intent was to prevent plaintiffs' interstate competition and the shipment of their coal to the interstate markets where it was so vital for the Central Company to maintain the price?

When the same order is given by White for the same reasons, White's interest and object being identical with that of the Central Company, where is the difference?[48]

Additional New Testimony Warranting the Jury in Finding that the Conspirators were not Motivated by Local Causes.

In this Court's opinion, after holding that the original record did not contain sufficient testimony to warrant a finding by the jury that defendants were actuated by the primary purpose to interfere with interstate commerce, and after eliminating the reason relied on by the defense—the aggressions of the "armed guards,"—the Court stated that the record contained sufficient testimony to support a finding that a third motive had been the impelling one. "The circumstances," the Court said, "were ample to supply a full local motive for the conspiracy" in a "bitterness of spirit" on the part of the District Officers and members against Mr. Bache's alleged "breach of contract," his alleged "evasion" of his contract by making a lease to a company not party thereto, his alleged eviction of Union men from his houses, reduction of their wages and bringing strangers to take their jobs, and his anticipation of violence by preparations to resist it.

On the second trial, after plaintiffs had offered new testimony sufficient to warrant an affirmative finding by the jury that the specific purpose and intent of the conspirators was to prevent plaintiffs' coal from moving in interstate commerce, it was unnecessary for them to go farther and produce new testimony to the effect that

[48]It is obviously immaterial that certain of the Central mines were in Arkansas, the markets to be protected being in other states.

the local causes suggested by this Court in its prior opinion had not in fact been in the minds of the conspirators or influenced them in destroying the property.

It was, however, obviously plaintiffs' right to offer such testimony for the consideration of the jury in deciding what had been the *primary* motive and purpose of the conspirators, and it was equally the privilege of defendants to offer testimony to show that such purely local considerations had been the moving cause.

Plaintiffs did in fact produce, in their case in chief, such new testimony in connection with each of the causes suggested.

Defendants offered no substantial testimony whatever on any of these matters, although they had at their call the hundreds of Union miners and their sympathizers whose purpose and intention constituted the principal issue in the case. They confined themselves to recalling the little girls and old men and women supposed to have been insulted by the armed guards.[48a] Neither Stewart nor any of the principal actors (other than White and McLachlan) took the stand.

This new testimony, of which this Court did not have the benefit on the prior writ of error, is fully quoted and abstracted in Appendix A (*infra,* pp. 102a-116a). It of itself would warrant the jury, it is submitted, in finding:—

That the conspirators did not regard Mr. Bache as having improperly "broken" his union contract but as

[48a]As indicating whether counsel for defendants regarded these matters as having influenced defendants, see his opening address at the second trial, Record, pp. 169-176. It is also not without significance that these matters were not made an issue by counsel for defendants at the first trial, but (except perhaps "breach of contract") were first suggested by counsel in this Court.

The sole issue made at the first trial was whether plaintiffs had been destroyed by an uprising of the community in protest against the aggressions of the guards or by defendants in order to protect the Union operators from the competition of plaintiffs' open shop coal.

fully justified in abrogating it because of its repeated and continuous disregard by the Union (*infra,* p. 104a).

That defendants did not in fact know which of plaintiffs' corporations were members of the Operators' Association and hence parties to the latter's contract with the Union, and which were not, nor did they know which of plaintiffs' corporations operated which property, and so could not conceivably have been incensed by his supposed attempt to "evade" his contract by making the lease of two of his Arkansas corporations to a third West Virginia company, particularly as it now appeared that Mr. Bache's sole purpose in making the lease had been not to "evade" the contract, but to obtain jurisdiction for a Federal injunction in case of possible violence and in view of the recognized Union demoralization of the local State authorities. No lease was made of the Coronado property, it being a West Virginia Company (*infra,* p. 106a).

That on the new and uncontradicted testimony of the Union officer in direct charge of the attack, Mr. Bache's preparations to defend his property did not in any way bring on the attack, but rather postponed it (*infra,* p. 113a).

That to the only "strangers" whom the testimony showed to have been brought to the mines by plaintiffs, the Union men showed no particular bitterness, but on the contrary safely conducted them out of the danger zone and paid their fare back to Tennessee (*infra,* p. 110a).

That no Union man was ever excluded from the Company houses, some few being asked to move to other company houses nearby, those who were ill being permitted to remain, and those who moved having remained in the substituted company houses rent-free until these houses were destroyed by the Union on the day after the battle. That there were no evictions whatever, in

spite of the consciously false articles in defendants' Journal so stating (*infra,* p. 109a).

That plaintiffs made no general reduction of wages. The work was merely adjusted so that skilled men did only skilled work at wages higher than formerly, the common labor being performed by common laborers at the current rate. By reason of the increased tonnage possible under open shop operation, the necessity for additional miners would have resulted in the discharge of no competent former employees (*infra,* p. 111a).

That Mr. Bache had in fact been wholly innocent of any such conduct as this Court had supposed, on the first record, to have characterized his behavior both to the Operators' Association and to his former Union employees; that, on the contrary, he had maintained to all parties, during this whole controversy and prior thereto, an entirely straightforward attitude, seeking merely to uphold, by honorable means, his lawful rights, against an all-powerful adversary which was constantly seeking, by treachery, intimidation and unlawful violence, to destroy him (*infra,* pp. 114a-116a).

Conclusion as to Proof of Interstate Intent.

It would be difficult to imagine a case, involving interference with objects not themselves direct instrumentalities of commerce, where there was proof more convincing than the foregoing of a specific intent by the conspirators to restrain interstate commerce by the device of throttling production at the source.

This Court found the first record lacking in competent testimony to show that defendants were primarily actuated by the purpose to protect the Union operators and miners from the menace of the interstate competition of cheaper cost open shop coal, holding that they were not shown to have been acting in furtherance of the General Policy.

From the passages in the opinion quoted *supra,* pp. 14-15 it would appear necessarily to follow, however, that if such testimony had been offered, plaintiffs' cause of action would be legally complete. From these passages it is also apparent *how* the necessary intent could have been proved.

This Court pointed out the lack of evidence to connect the General Policy with the local situation, the absence of circumstances or declarations of the parties indicating that Stewart and his accomplices had in mind interference with interstate commerce and competition, and the absence of testimony that any National officer had participated in the conspiracy. This Court further stated that what it then believed to be plaintiffs' maximum output—5000 tons *per week*—was too small to "have a substantial effect on prices of coal in interstate commerce," and that "no statement or circumstance appears in the record from which it can be inferred that the participants in the local strike" had in mind the possibility "that, if Bache were successful, the defection among Union operators would spread and ultimately the whole District field of District No. 21 in Arkansas, Oklahoma and Texas would become non-union and interstate commerce would then be substantially affected" (p. 413).

Each feature thus found lacking in the prior record was supplied by the new testimony produced at the second trial.

If such testimony had been in the first record, it is submitted that this Court would have affirmed the original judgment.

It follows that, at the second trial, the question as to whether defendants were actuated by the intent to interfere with interstate commerce and competition should have been submitted to the jury.

Should this Court hold that this new evidence was not even sufficient to submit to a jury on the ques-

tion of what was the primary purpose of the conspirators, it is submitted that it will become, as a practical matter impossible to make out a case under the Sherman Act involving the destruction of the sources of production of staple articles of commerce, even where the expressed purpose of the conspirators is to stifle interstate competition and commerce in such articles. This Court's decision as to the suability of an unincorporated Labor Union will then, for all practical purposes, be nullified as applied to these defendants, in spite of their vast interstate organization, so long as they refrain from direct action such as destroying cars in transit or boycotting interstate customers,—methods of attack entirely unnecessary to attain their ends.

The present writ of error is not from a proceeding in equity where the chancellor has refused to find from the evidence the facts requested by plaintiffs. This is an action at law for damages in which the trial Judge has refused to submit plaintiffs' evidence to the jury. The present question is not, therefore, whether the weight of the evidence supports plaintiffs, but whether there was any competent testimony to submit to the jury.

It is submitted that by its prior decision this Court had no thought of modifying the established functions of Court and Jury, or of reversing the many decisions holding that where a material question in a jury case is as to the intention with which certain acts are done, and it is shown by competent evidence that any one of the several motives may have actuated the parties, the question as to which motive was paramount is for the jury.

Motive, intent, the purpose with which acts are done can rarely be proven by evidence from the declarations of the actors as direct as that presented in the case at bar. It is the primary function of the jury rather than of the Court to penetrate the screen of events and

to deduce from what has occurred the intent with which the acts in question were performed.[49]

"The intent with which an act was done may be proved by the declarations of the party concerned, or by facts and circumstances from which the existence of the intent may be reasonably inferred."

Stuart *vs.* Hayden,[49a] 169 U. S. 1, 9. Here the question was whether Stuart had transferred his stock with the intent of escaping the liability imposed by the statute on shareholders of national banking associations. As appears from pages 10 and 12-13 of the opinion, such relevant intent was held provable not only by surrounding "facts and circumstances," but by Stuart's "declarations" *prior to the transfer* indicating a motive and purpose to part with the stock because he distrusted the bank's business methods.

In view of the new testimony produced at the second trial the present case falls directly within this Court's former anti-trust decisions, notably the Temple Iron case.[50] Here the conspirators had acquired all the stock of seven anthracite coal companies, having a large tide-water business, in order to be able to divert their future traffic from an as yet unconstructed railroad, projected by independent promoters. Future interstate shipments were thus prevented, not by direct attack on the railroad, the instrumentality of commerce, but by cutting off its prospective customers, striking at the source and acquiring what had not yet itself become a subject of interstate commerce.

---

[49]Pierce *vs.* U. S., 252 U. S. 239, 250;
Corsicana Bank *vs.* Johnson, 251 U. S. 68, 71, 72, 80, 81, 90;
Aetna Ins. Co. *vs.* Ward, 140 U. S. 76, 82, 86.

[49a]See also Mutual Ins. Co. *vs.* Hillmon, 145 U. S. 285, 295;
Insurance Co. *vs.* Moseley, 8 Wall. 397, 404, 405;
I and III Wigmore Evidence, Secs. 118, 1714, 1725, 1728.

[50]U. S. *vs.* Reading Co., 226 U. S. 324.
In that case the Court found from purely circumstantial evidence, that the mines were acquired *with the specific purpose of restraining commerce* (pp. 352-55) in spite of the positive testimony of defendants' president that such was not at all their purpose (pp. 354-55).

In Loewe *vs.* Lawler, 208 U. S. 274, 235 U. S. 522, the converse appears. Here also the attack was not against a direct instrumentality of commerce. Instead of directing the attack at the point of production, as in the Temple Iron and Pennsylvania Sugar[51] cases, the conspirators acted at the point of consumption, not directly interfering with any interstate sale, but threatening and boycotting the customer *with the specific intent* to interfere with *prospective* interstate sales.

In that case, referring to Montague *vs.* Lowry, 193 U. S. 38, this Court said (p. 300):—

> "This Court held that this obstruction to the purchase of tiles, a fact antecedent to physical transportation, was within the prohibition of the Act."

In discussing the contention that part of complainant's business was intrastate the Court held this to be no defense. At page 301 it said:—

> "If the purposes of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced, and at the other end after the physical transportation ended, was immaterial."

Hitchman Coal Co. *vs.* Mitchell, 245 U. S. 229, involved an attempted interference by these same defendants with a coal mine in West Virginia, the unlawful means employed involving merely deception and misrepresentation and not the destruction of life and property.

As explained by this Court in American Foundries *vs.* Tri-City Council, 257 U. S. 184 at p. 211, the campaign against the Hitchman Company was part of a

[51] Penna. Sugar Co. *vs.* American Sugar Co., 166 Fed. 254. Compare also Shawnee Compress Co. *vs.* Anderson, 209 U. S. 423; see also U. S. *vs.* American Tobacco Co., 221 U. S. 106, 165-6, 183, as to the fact of the closing of the competing plants purchased as evidence of specific intent to restrain interstate commerce; a tobacco *plant* is no more itself interstate commerce than a coal mine.

"plan to bring the employees of the complainant company and all the West Virginia mining companies into the International Union, so that the Union could control, through the Union employees, the production and sale of coal in West Virginia, in competition with the mines of Ohio and other states."

Chief Justice Taft said:—

> "*This Court held that the purpose was not lawful,* and that the means were not lawful and that the defendants were thus engaged in an unlawful conspiracy which should be enjoined" (p. 211).

Coal mining was no more interstate commerce in the Hitchman case than in the case at bar. This Court apparently held, however, that where the attempted unionization of a non-union mine was for the primary and express purpose of controlling production and of preventing the shipment thereof in competition with that mined by the Union operators, this was an unlawful purpose.

It is not necessary, however, to decide in this case whether or not the Clayton Act permits a labor union to unionize open shop mines for such purpose by lawful methods, since defendants have used manifestly unlawful means.

> "It [restraint of commerce] is not to be justified by the fact that the participants in the combination or conspiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute."
>
> Duplex Co. *vs.* Deering, 254 U. S. 443, 468.

Without burdening the Court with a review of the decisions so familiar to it, we venture to append a few appropriate quotations.

> "The Act prohibits *any combination whatever* to secure action which essentially obstructs the free

flow of commerce between the States, or restricts, in that regard, the liberty of a trader to engage in business."

Loewe *vs.* Lawlor, 208 U. S. 274, 293.

"The Court's protective and restraining powers extend to *every device* whereby property is irreparably damaged or commerce illegally restrained. To hold that the restraint of trade under the Sherman Anti-Trust Act, or in general principles of law, could be enjoined, but that the means through which the restraint was accomplished could not be enjoined, would be to render the law impotent.

Gompers *vs.* Bucks Stove & Range Co., 221 U. S. 418, 439.

See also U. S. *vs.* Standard Oil Co., 221 U. S. 1, 59-60; American Lumber Co. *vs.* U. S., 257 U. S. 377-400.

"The conspirators must be held to have intended the necessary and direct consequences of their acts and cannot be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are in legal contemplation chargeable with intending that result. Addyston Pipe & Steel Co. *vs.* U. S., 175 U. S. 211, 243; U. S. *vs.* Reading Co., 226 U. S. 324, 370."

U. S. *vs.* Patten, 226 U. S. 525, 543.

"No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected acts or omissions may be made a step in a criminal plot, and if it is a step in a plot neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law."

Aiken *vs.* Wis., 195 U. S. 194, 206.

"As to the suggestion that the matters alleged to have been contemplated would not have constituted an offense if they had been done, it is enough to say

that some of them conceivably might have been adequate to accomplish the result, and that the *intent alleged would convert* what might on their face be no more than *ordinary acts of competition* or the small dishonesties of trade, *into a conspiracy of wider scope,* as has been explained more than once."

Nash *vs.* U. S., 229 U. S. 373, 378.

"Although the combination alleged embraces restraint and monopoly of trade within a single state, its effect upon commerce among the states is not accidental, secondary, remote, or merely probable. On the allegations of the bill the latter commerce no less, perhaps even more, than commerce within a single state, is an object of attack * * * Moreover, it is a direct object. It is that for the sake of which the several specific acts and courses of conduct are done and adopted."

Swift *vs.* U. S., 196 U. S. 375, 397.

"The full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations."

Minnesota Rate Cases, 230 U. S. 352, 399.

"The scheme as a whole seems to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body, and, for all that we can say, to accomplish it * * *. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as parts of a single plan. The plan may make the parts unlawful. Aikens *vs.* Wisconsin, 196 U. S. 195, 206. The statute gives this proceeding against combinations in restraint of commerce among the States and against attempts to monopolize the same. Intent is almost essential to such a combination and is essential to such an attempt."

Stafford *vs.* Wallace, 258 U. S. 495, 517-18, 522.

See also Lemke *vs.* Grain Co., 258 U. S. 50; Eureka Pipe Line Co. *vs.* Hallanan, 257 U. S. 265.

Kidd *vs.* Pearson, 128 U. S. 1, 22; Coe *vs.* Errol, 116 U. S. 517, 525-6; U. S. *vs.* Knight Co., 156 U. S. 1, 17; and the other cases holding that the mere intent to ship does not put an article into commerce, all contain statements that a State Statute taxing or regulating an article not yet in transit will be unconstitutional if it appear that the State actually intended to tax it *as an export* or to discriminate against interstate commerce thereby.

Cf. Pennsylvania *vs.* West Virginia, 262 U. S. 553.

Discrimination against interstate commerce by a State is equivalent to a specific intent to interfere with it by a combination of individuals.

> "If a State, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?"
>
> In re Debs, 158 U. S. 564, 581.

In considering the above cases, Judge Pollock failed to distinguish[52] between the *intention of the plaintiff*,—the producer of coal,—to ship his product to other states, which does not make production interstate commerce, and the *intention of defendants* to prevent his doing so by striking at the source, which latter intention of itself converts the conspiracy into one condemned by the Sherman Act and makes the unlawful acts committed pursuant thereto the subject of treble damages.

---

[52] "Now, the trouble of this case was, and the trouble with this case will always be this: The mining of coal comes under the law of the State; it is in no sense interstate commerce. Coal itself when mined may become the subject of interstate commerce, but is in no sense interstate commerce. A man can mine all he wants with the intention that he will ship it to some other state, yet there is no interstate commerce in that whatever. * * * It is true Mr. Bache, if he had been permitted to have gone ahead there and mined coal, undoubtedly would have shipped some coal in interstate commerce, but that is not interstate commerce. I don't care how much he intended to ship in interstate commerce" (2237).

POINT II.

THERE WAS SUFFICIENT EVIDENCE FOR SUBMISSION TO THE JURY ON THE QUESTION OF THE LIABILITY OF THE NATIONAL ORGANIZATION.

The defect which this Court found with plaintiffs' original case as to the liability of the National Organization was the same defect as that found in connection with its original proof of specific intent,—that it involved too many inferences unsupported by proper proof.

The first record was lacking in direct proof that the National Organization had participated in the attack at Prairie Creek and showed the District Officers and members as the sole active participants. Plaintiffs were thus compelled to rely on the theory that the District and its officers and members were *agencies* authorized by the National to bind it for torts committed in the course of strikes.

In the absence of evidence of a prior course of conduct authorizing the District and Local officers and members to do the acts complained of on behalf of the National body, plaintiffs were forced to point to some express authorization in the Union Constitution creating an *actual agency*. They contended that such a provision was found in Article XVI entitled "Strikes" (224) and providing that "Districts may order Local Strikes within their respective Districts on their own responsibility." National President White had testified at the first trial that this was a "local strike," conducted by District 21, and plaintiffs contended that from the evidence the jury might properly find that District 21 had acted pursuant to the General Policy of the National body, to protect Union Operators against open shop competition. Plaintiffs therefore argued that the National body, having thus expressly author-

ized the District to order and conduct this strike without further action on its part, for the attainment of the primary objects of the National body, the funds of the latter were liable for any damages occurring as an incident of such a strike.

This Court held, however, that there was no competent proof in the record then before it that in ordering and conducting this strike, District 21 was acting pursuant to the business and policy of the National body, and that the evidence was competent to warrant the finding that District 21 had destroyed the property in satisfaction of a private controversy of its own, with which the National was at best but remotely concerned. The Court said (p. 395):—

> "A corporation is responsible for the wrongs committed by its agents in the course of its business, and this principle is enforced against the contention that the torts are *ultra vires* of the corporation. *But it must be shown that it is in the business of the corporation.* Surely no stricter rule can be enforced against an unincorporated organization like this."

The present record differs essentially from that then before the Court by reason of the presence of substantial new testimony which would warrant a finding of liability by the National on a number of different grounds, none of which were presented or passed upon by this Court on the original record.

Before discussing the new testimony which, in our view, should have been submitted to the jury on the present point, it would seem helpful, particularly for the members of the Court who did not participate in the prior decision, to review briefly the relative powers of the National body and those delegated by it to its District or local Branches. In so doing it is not our thought to reargue any of the questions decided on the former writ of error, but merely to give the Court all the proper

material for a decision on the new questions here presented.

The Relative Power and Status of the National Body and its District and Local Branches.

As observed by the Court in its prior opinion, the United Mine Workers Organization "is admirably formed for united action under the direction of the National Officers."

The National body is not a confederation of the Local or District Branches. They did not create the National Association, but were created by it.[1]

Section 2 of Article III of the National Constitution entitled "Jurisdiction" is as follows:—

> "SEC. 2. All Districts, Sub-Districts and Local Unions must be chartered by and shall be under the jurisdiction of and subject to the laws and rulings of the International Union" (201).

The sole permissible activities of the District and Local Branches are in the furtherance of the purposes and objects of the National Body. They may use their local funds for no other purpose.[2]

The National President has power to suspend or to disband any Local Union, and the National Executive Board has the same arbitrary power in reference to a District Branch,[3] in which case the District or Local

[1]See the authoritative articles in the Official Journal giving the history of its organization and interpreting the provision in the Constitution above quoted, such articles being by the National President, whose duty it is, under Section 7, Article IX (205) to "interpret the meaning of the International Constitution" subject to "repeal by the International Executive Board" (273-4).

[2]See Article XIV, Secs. 25 and 26, Record, p. 220.

[3]"The International President has authority under our law to revoke the charter of a Local Union. * * * The funds of the Local Union would revert to the International Union and they would not exist as a Local Union any longer. * * *

Q. The President has not any authority to suspend or revoke the charter of a District Branch? A. The International Executive Board has that authority." National Secretary-Treasurer Green, Record, pp. 180, 181.

funds fall into the National Treasury. The record in this case shows that this is no mere *theoretical* power, but that it has frequently been exercised *in actual practice.* Thus in July, 1911, the charters of 28 Local Unions were forfeited for insubordination to the policy of the National and their funds absorbed into the latter's treasury (279-280). In the testimony of defendant Green, the National Secretary-Treasurer, he specified five District branches which had been thus suspended by the National Board and their funds taken over by it (180-181).

This organization has also, by its basic law, gone one step beyond that recently suggested as to the Federal Constitution, and has given, not to the Legislative Body, but to the Executive, express power to interpet the meaning of the International Constitution:—

> "He [the National President] shall interpret the meaning of the International Constitution, but his interpretation shall be subject to repeal by the International Executive Board." (Sec. 7, Art. IX), Rec., p. 204.

Having thus in mind the organization of the National body and its so-called "autonomous" District and Local Branches, we may now turn to the new testimony in the present record. This testimony we will discuss under the following headings:—

1. The destruction was effected in the prosecution of the business and primary object of the National Organization.

2. The destruction was initiated, participated in and ratified by the National Body.

3. The enlarged powers of the National President by authoritative construction of the National Constitution by the National Executive Board.

4. The destruction was not a mere incident in a local strike, President White's order therefor being independent of the existence of any strike.

5. The destruction was a step in a pre-existing conspiracy of nation wide scope, to which the National Body and District 21 were both active parties.

1. The Destruction was Effected in the Prosecution of the Business and Primary Object of the National Organization.

The testimony to the above effect has been fully discussed in connection with the liability of the District.

Since a corporation or association can act only through its officers, it is essential to know, in considering the liability of the association for their acts, whether or not what they did was in the course of the business of their principal, or was in pursuance of some extraneous motive.

On the original record this Court held that there was not sufficient testimony to warrant a finding that the acts of the District Officers and members, for which it was there sought to hold the National body liable, were committed in the course of the business of the latter, or pursuant to the General Policy which it had adopted.

Now, however, there is competent testimony that plaintiffs' mines were destroyed pursuant to the basic General Policy of the National Body. This Court's statement therefore becomes directly applicable:—

> "A corporation is responsible for the wrongs committed by its agents in the course of its business, and this principle is enforced against the contention that torts are *ultra vires* of the corporation. But it must be shown that it is in the business of the corporation" (259 U. S. 395).

The present record contains other testimony, not in the prior record, as to the relative functions of the Districts and the National body, from which, it is submitted, the jury would be justified in finding that, as administered in practice, it was the duty of any District in which an open shop operation was threatened, to

take steps to prevent this, *acting as a part of the National.*

At the new trial ex-President White testified as follows (2124):—

"Q. Did you ever talk to the district president or district Board members about matters of importance in the district? A. No, I wouldn't have much occasion to do that. They were given complete autonomy over their own affairs, to direct the energies of their own district.

Q. For what purpose were they given complete autonomy? Could they do anything they wanted to? A. As long as it did not conflict with the laws of the parent organization.

Q. What were they supposed to be working for? A. Working for?

Q. Yes. What were they seeking to accomplish? A. To keep their contract and promote international peace and carry on the work of the organization generally, as outlined in the aims and objects in the preamble of the district constitution.

Q. And the unionization of the non-union miners of the country? A. Oh, sure, to organize.

Q. And to keep all the union mines unionized? A. Yes."

Earlier in his testimony White had said:—

"Q. As National President, an open shop mine, mining 5000 tons of coal, right next to a Union mine, would not interest you a bit? A. No, sir, **that would be up to the District** of that jurisdiction and District 21 was a united organized district for years." (2117.)

The Constitution of the National Organization contains the following provision (Art. XIV, Sec. 10, Rec. 218):—

"Any member going to work in a non-union mine shall forfeit his membership. * * *"

In the course of the cross examination of District Board Member McLachlan at the second trial, he testified as follows:—

"Q. When the Bache-Denman Company started to employ non-union men at Prairie Creek, then under the rules of the United Mine Workers, no Union man could work there with those non-union men. Is that correct? A. Yes, sir, they could not work with them.
* * *

Q. So that no action at all was necessary at all by the District or Local Officers in that connection. A. None whatever." (2149; see also Hanraty, 511.[4])

The obvious conclusion which the jury would be entitled to draw from the above evidence was that, under the arrangement between the National and its District Branches which White's testimony now discloses, the National had made it the duty of each District to protect itself and the adjoining Districts from the menace to their membership which would result if a Union mine turned open shop. The reason White was not disturbed by the presence of such a menace in District 21 was that he felt that the problem would be adequately handled by the party to the combination which, under the arrangement, was in immediate charge of this particular phase of their joint business.

White, as President of the whole organization, is relieved of personal anxiety as to a problem vital to them all, because he knows that a competent District Manager has been placed in immediate charge of its

[4]The following offer of proof by the witnesses Hanraty was rejected by the trial Judge and exception duly taken (570):—

"MR. DRINKER:—I offer to prove by the witness on the stand that the term 'local strike' is a term which has a peculiar significance among the miners organization, well understood by them; that it refers to a strike which involves the interpretation of the contract between the miners and the operators; that the term does not apply to a strike which is directed against an open shop attempt by a former union operator in a union field, for the reason that such a strike as that involves not merely the locality where the particular mine operates, but the other districts and the entire National organization, because such an operation, if allowed to go on without opposition or suppression by the miners union, would inevitably spread first to the adjoining union mines, and then to the other union mines, to the adjoining districts, and ultimately to the entire National organization." See also 518-9.

solution for the purpose of protecting the other Branches from a menace which threatens their common objective.

For an over-zealous performance of this duty by any Branch Manager, the main body which imposed it should be held liable, provided what the Branch Manager does is in the furtherance of the common business.[4a]

On the first record this Court held that there was not sufficient testimony to warrant a finding that the Branch acted in pursuance of the common objective, or that it was engaged in the "business" of the whole association. On the present record the jury would be warranted in so concluding.

No strike order by either the National or District Board was necessary to call out the Union members when Mr. Bache employed men not members of the Union (2149). From the record it does not appear that any such order was in fact issued.

The National Constitution itself required them to cease work, and under the same National Constitution it was the duty of the District to take the necessary steps to keep these mines from breaking away from the Union and to protect the membership against the menace of their open shop competition.

According to the present testimony, therefore, irrespective of the direct orders of National President White hereafter discussed, the jury would be warranted in finding that the District Officers and members were acting not independently, but in their capacity as *a functioning part of the main organization,* pursuant to the obligations directly imposed on them by the terms of the National Constitution, for the purpose of furthering its primary objective.

[4a] "Where a voluntary association creates a subsidiary or branch association as an instrumentality through which to accomplish certain purposes, it is liable for the acts of such a subsidiary association to the same extent as though such acts had been done by the entire membership."

Spaulding *vs.* Evenson, 150 Fed. 517.

2. There was Competent New Testimony for Submission to the Jury that the Destruction was Initiated, Participated in and Ratified by the National Body.

The third question discussed by this Court in its opinion was "whether the International Union was shown by any *substantial* evidence to have initiated, participated in or ratified the interference with plaintiffs' business."

The Court held that the original record contained no such testimony.

It was held that although White's report to the Executive Board of the riot of April 6 showed sympathy with its purpose and a lack of respect for law, it did not imply or prove any prior initiation or a desire to ratify the transaction as his work. It was further held that neither White's speech to the District 21 convention on May 18 (in which he did not expressly refer to plaintiffs) nor his subsequent appointment of a confessedly guilty District Officer to a position on a District Committee could be considered a ratification by the Executive Board creating liability for a *past tort.*

In the present record in addition to the above testimony, we have new and substantial proof, both direct and circumstantial, of National participation.

(1) General Directions by National Officers to Officers and Members of District 21 to Prevent the Shipment and Competition of Open Shop Coal.

As introductory to the new proof of direct National participation we call attention to certain new testimony, which is significant, taken in connection with the other new facts proved, as indicating direct encouragement and direction by the National Officers to their District subordinates to carry out with increased vigor the General Union Policy to protect Union Operators against open shop competition.

At the 1912 Biennial Convention of District 21, both National Secretary Green and National Vice-President Hayes made speeches, neither of which was in the prior record.[5]

In Green's speech[6] he emphasized particularly the importance of unionizing West Virginia to protect the union operators in the Central Field and reminded the District 21 members that they had an exactly similar problem in the menace of the Colorado open shop mines, to the Union miners and Operators in District 21.

Vice-President Hayes followed this by a speech[7] in which he stated that he was there as the personal representative of President White. He emphasized the importance of an understanding by "every member in our organization" of "the non-union fields and the competitive relations that enter into the production of coal" (333).

He then said:—

"With that knowledge we can safely decide and thoroughly decide, with credit to our organization, with safety to our organization, upon a correct policy.

---

[5]Both Green and Hayes are defendants in this case.

[6]Quoted, Appendix A, pp. 27a-29a (Record, p. 332).

[7]With Hayes' speech it is interesting to compare, in view of the new evidence of White's direct participation in the conspiracy, the latter's speech to the District 21 Convention on May 18, 1914. In this speech White, who was just about to instruct McNamara and Slankard to bring about, if necessary, the destruction of plaintiffs' open shop, took the only means which, in view of the injunction (made permanent by Judge Youmans ten days before) he dared to take to incite the delegates to violence against the Bache-Denman open shop operation next door.

He made a skillful and inflammatory speech (987-99) filled with the same misrepresentations about the "armed guards and thugs" and the same incitement to defy the constituted authorities which formed the basis of the "plan" he and Stewart had originated for the ultimate destruction of the plaintiffs' property, promising the support of the National Organization to the District should they need such support in a cause which all his hearers knew involved the same issue as that in West Virginia and in Colorado,—the open shop.

In that way we will protect the life of the organization."

Hayes closed his speech as follows (334):—

"I want to assure you that the International Union will give you its fullest cooperation and support in protecting the interests and rights of the membership in this field.

"When we are called upon at any time we will hasten to your rescue, and do what we can to make the organization here in the Southwest second to none in our jurisdiction."

(2) THE DESTRUCTION OF PLAINTIFFS' BUSINESS AND PROPERTY WAS PLANNED, ORDERED AND EXPRESSLY RATIFIED BY NATIONAL PRESIDENT WHITE.

As shown by the former record, as well as by the present, on May 4, 1914, White made a speech to his Executive Board in which he told how Mr. Bache had learned of the bribery of District Secretary Holt in connection with the securing of the contract under which he was working, which contract preserved to plaintiffs' principal competitor a considerable operating discrimination.[8] It was on learning of this, White said, that Bache started non-union, whereupon, as White reported to the Board, the Union men attacked the mines, assaulted Bache's men, pulled the fires and so rendered the mine idle, and in token of the Union victory "placed the flag of the United Mine Workers on the tipple."

White's Formation of the Plan.

By new testimony in the present record it appeared that prior to May 4th, the date of the above speech, President Stewart had been to Kansas City and "had a talk with White" and that "they had **arranged a plan** up there to prevent Bache from producing coal" (951-2).

[8]The above circumstance came out in the second trial. (See note 9, p. 74.)

This testimony Stewart did not take the stand to deny.[8a]

White's Direction of the Attack.

It further appeared that on May 18th President White came to the Convention of District 21, specially called to try Secretary Holt on the bribery charges, remaining the entire week of the Convention.[9] On the second day he sent for McNamara and Slankard, the two local leaders in charge at Prairie Creek. After secretly taking them upstairs so as not to be recognized in their company, he told them that Stewart had informed him of conditions at Prairie Creek and had further told him that plaintiffs could not get enough men to operate their mines; that if they did,

"we must prevent that coal **getting into the market** * * * because if Bache coal, scab dug coal got into the market, it would only be a matter of time until every union operator in that country would have to close down his mine, or scab it, because the Union operators could not meet Bache competition" (952). * * *

(On cross examination):—

"Q. Then he told you he didn't want you to say anything to the boys down there because he was trying to keep the National Organization out of it? A. No, sir. He said, 'I want you to go down there and tell them what I told you, but don't tell them that I told you'"[10] (971).

[8a]From other testimony it appeared that Stewart, White, and James Mullen (National Executive Board Member for District 21) had all been in Kansas City together from April 10 to April 15 (2162, 1804, 2153).

[9]2115, 2121-2, 2163, 1445, 1505.

[10]While, according to McNamara's testimony, White, both by his actions and by his statements, clearly wished not to have the National body implicated in the consequences of what he was telling his subordinates to do, it is equally clear that he was then using his authority as National President to direct them to do the things which the prosecution of the National business required. Can a principal escape liability in ordering his subordinates to do a specified act, merely by emphasizing his desire not to be responsible for it or by endeavoring

"He told us to tell the men not to do anything until Bache began producing coal, and **then it was time to act,** or words to that effect" (971) * * *

Mr. White, when he rose up to go, said:—

"Now you boys will not lose a day and your expenses will be paid for every day you are in this trouble" (973) * * *.

McNamara further testified that pursuant to White's instructions, he and Slankard had then gone up and down the Hartford Valley, repeating and spreading among their fellow unionists (although without mentioning White) the instructions which White had thus given them.

He further testified that, as soon as plaintiffs secured the necessary men, succeeded in freeing the mines of the water which had accumulated, and *were ready to ship coal,* the Union made the attack and destroyed the property (965).

Elsewhere in McNamara's testimony, he testified that Stewart had been in constant touch with him throughout this entire period, knew all that was going on from beginning to end, and after the destruction of plaintiffs' property had been completed, approved of it in unqualified terms.

"Q. Was he (Stewart) frequently down in that country during these three months? A. Yes, sir.

Q. Did he know everything that was going on? A. Yes, sir.

Q. Did you report to him? A. Quite a number of times" (946; see also 947).

* * * * * * *

to conceal the part he has played in causing it? While the National were merely designedly *undisclosed principals* the jury would be warranted in finding from this testimony that White's purpose was to have the National in the conspiracy for *results,* but out of it for *responsibility,* a consummation devoutly wished by many conspirators, but one which it is one of the primary purposes of laws and Courts to frustrate.

"I realized in the very near future we were going over to do what we did, and we wanted to leave the impression with everybody possible that the district organization had nothing to do with it.

Q. Had you thought of that yourself? A. *We had talked about that quite often, Stewart and I*" (967).

* * * * * * *

"Stewart first done some talking and [the day after the Battle] he asked us [McNamara and Slankard] in detail of the trouble and we told him briefly and he said 'That is the best piece of work I ever heard of being done in my life.' He said, 'I congratulate you'" (958).

It is submitted that a fair summary of the foregoing testimony is as follows:—

That White, (the President of the National Body) had, with Stewart (the President of District 21) formulated the "plan" which resulted in the destruction of plaintiffs' property; that the primary object of such plan was to prevent plaintiffs' coal coming into competition with that mined by the Union Operators in the markets which they jointly served; that in accordance with such plan White ordered his local subordinates to prevent such shipments; that White promised McNamara and his associates compensation for their services to his organization in carrying out his instructions; that Stewart was familiar with all the details of such plan and was in touch with McNamara throughout its execution and instructed him as to the details; that in accordance with such plan the properties were to be destroyed when plaintiffs were ready to ship coal; and that when this event occurred they were so destroyed in pursuance of White's instructions, for the reasons he had given.

White's Express Ratification.

Two years later, after McNamara had finished the term at Leavenworth to which he was sentenced by

Judge Elliott for his participation in this affair, he again met White in Hartford, and asked him when "I will get my money that I was promised for this work." White replied: "I will take it up with the Board as soon as I can" (962).

"We talked a little about the Prairie Creek trouble and he said, 'The *only mistake* that was made in that Prairie Creek trouble, if those two men had not been murdered you would not have had public sentiment against you, but on that it is against you a little bit there' " (963).[11]

On cross examination:—

"Q. Did you have any arrangements to get money from him then? A. It was generally understood that the National Organization was going to pay us for the time we lost. It was generally understood we were going to be paid, and I thought the only man to go to would be White to get it, because he was the National President (973).

Q. You knew that the District was managing that fight? A. **I know they did** (they did) **not"** (974).

(3) Publication by the Executive Board of Journal Editorial in Pursuance of White's Plan.

In addition to certain minor items of testimony which the jury might properly have regarded as corroborating that of McNamara, and as indicating direct participation by the National body in the conspiracy,[12] the new testi-

[11]By having White deny these conversations (2113) and by calling witnesses to impeach McNamara's reputation for veracity (2131-2) defendants merely emphasized the conflict of testimony which it was for the jury to resolve.

[12]Such for example was the statement to the witness Searles by Tom King, who for many years prior to 1914 had been a National Organizer (947) that the Bache-Denman strike then in progress was "no outlaw strike" and that the District and National is behind it and the Bache-Denman Coal Company is not going to work" (896); the statement of Union men to the witness Holloman, track-foreman on the Midland Valley Railroad, that this "was too big a job to be handled by them fellows and that it would have to be handled by the entire membership of the United Mine Workers" (1012); the presence in the report of District Treasurer Holt from April-October, 1914, of

mony in the present record threw an entirely new light on certain of that in the old record and gave to the latter a legal significance which, without such new evidence, this Court had held was not properly attributable thereto.

Under the facts in the former record this Court held that the mere publication by the Executive Board, subsequent to the Battle of July 17, of certain articles in the Official Journal, encouraging and approving the attack as in self-defense, could not be regarded as a ratification "after the fact" of such acts by the Executive Board, *there being no evidence in that record that the Board or any member of it did not honestly believe the truth of the justification relied on.*

On the prior record it did not appear that the acts to which plaintiffs sought to make the ratification of the Board applicable, had been done on behalf of the National Body, and the testimony, therefore, came within the familiar rule limiting ratification to acts purporting to have been done on behalf of the principal. The new testimony shows that their acts were done pursuant to the General Policy.

In the present record there is direct new evidence that White, the Chairman of the Board, directly responsible for the publication of the Journal, had himself, with Stewart, made the "plan" to destroy plaintiffs.[13]

---

an item "National Organizer $801.26" among the items relative to the disbursements in the "Prairie Creek Strike" (1803-4).

The interest and participation by the entire organization is further corroborated by the inclusion in District Treasurer Holt's report for 1914-15 of three full pages of contributions to the Prairie Creek Strike by Local Unions other than those at plaintiffs' mines, including Locals on Kansas, Missouri, and other States whom plaintiffs' elimination was designed to protect (1806-1808); compare Art. XIV, Section 25 of the Constitution (p. 220).

[13]As to White's duty to disclose to the Board his knowledge of matters affecting the organization and the presumption that he did disclose all such matters which it was not to his interest to conceal, see American Bank *vs.* Miller, 229 U. S. 517;

Armstrong *vs.* Ashley, 204 U. S. 272, 283;

Re Distilled Spirits, 11 Wall. 356, 367.

The essential features of the "plan" which White and Stewart thus made, appear from the way in which it was carried out by their subordinates. It consisted not only of the actual attack on plaintiffs (which of itself could hardly be termed a "plan") but of the elaborate scheme for concealing defendants' part in it, by the wholesale circulation of the knowingly false accounts of the imaginary aggressions by "armed guards." According to the testimony admitted, as well as that offered and rejected by Judge Pollock (to the full benefit of which plaintiffs are here entitled) this circulation of false accounts of attacks by "armed guards and thugs" was a regular and essential feature of the program or "plan" of campaign practised by the responsible officers of the National body "all over the country" under similar circumstances.[14]

In the issue of July 23, the next published after July 17, there appeared in the Mine Workers Journal an Editorial entitled "The Truth about Hartford" (1041) which we reproduce in Appendix D (p. 129a) and to which, in view of the new testimony in the present record, we call the Court's attention.

The Journal is made by the National Constitution the official organ of the National body (227). It is published by it under the supervision of the National Executive Board (245, 268), and its editorials are the authoritative means of expression by the Board.

The Editorial entitled "The Truth about Hartford," frankly admits that plaintiffs' property was destroyed by the Union men of District 21. It applauds the attack and destruction which it describes, and justifies it

[14]944, 950; quoted, Appendix A, 52a-53a.
The rejected offers were very broad to the effect that the publication of such fake reports was part of the regular program in open shop strikes (*infra*, pp. 92-3, 96). McNamara testified to the same effect at the pages above cited.

as in defense of their homes and of their wives and children from the attacks which it states had been made against them by plaintiffs' "private army of hired thugs."[15]

The jury might properly find from the new testimony in the present record that the prompt publication by the National Executive Board of this official editorial, as well as the prior and subsequent publications of the other articles and communications which the present record contains, was the active part openly assumed by the National body in carrying out the conspiracy.

The National now appears not merely as a non-active principal, but as an active co-conspirator.

By this editorial the National Executive Board fully approved the destruction of plaintiffs' property, giving an excuse which, as the present testimony shows, the Chairman of the Board must have known to be false. This knowledge eliminates the *bona fides* of the excuse and makes the editorial stand as a complete ratification by the Board.

3. The Enlarged Powers of the National President by Authoritative Construction of the National Constitution by the National Executive Board.

The Court below construed this Court's decision as holding, in effect, that the National President had no power to bind his organization by any action, which was not shown by direct evidence to have been formally authorized by the Executive Board. As we shall presently point out, the statements by this Court thus relied on related merely to the ordering or ratifying of strikes involving local issues, and did not relate to the ordinary

[15]In Union parlance a "thug" is merely one who acts as a guard at an open shop mine, irrespective of his prior behavior and no matter whether he be a minister or a school teacher. See testimony quoted in Appendix A, pp. 52a-53a.

activities of the Chief Executive in the course of the business of the organization.

Irrespective, however, of this distinction, we call attention first to new testimony in the present record greatly enlarging the powers of the National President, as exercised in practice, over what appeared from the bare provisions of the Constitution, which were all the Court had before it on the original record.

Defendants contend that, this Court having construed the Constitutions, no additional evidence is relevant as to the powers of the Officers to bind the National. They overlook the fact that the powers of officers to bind a corporation or association may be based, not merely on the wording of a written authorization, but also on its practical interpretation by the parties, and on their approval *in actual practice* of a similar course of conduct as a recognized activity and as part of the proper business of the organization. This is particularly important in a case like the present, where we have the rather unusual provision in the National Constitution, specifically authorizing the President and Executive Board to "interpret the meaning of the International Constitution" (Record, 204).

In this connection the statement by this Court relative to the Constitution of the Hatters' Union is particularly appropriate (235 U. S. at page 535):—

> "If the words of the documents on their face and without explanation did not authorize what was done, the evidence of what was done publicly and habitually showed their meaning and how they were interpreted. The jury could not but find that by the usage of the unions the acts complained of were authorized, and authorized without regard to their interference with commerce among the States."

If oral testimony of the construction in practice were originally proper to modify the *prima facie* meaning of

the Constitution, certainly it was equally proper at the new trial to modify the meaning ascribed to it by this Court without the benefit of such testimony.

The National Constitution makes the President the chief executive officer of the organization. As stated by this Court, under it "the President has much power" (259 U. S. p. 384).

Section 31 provides that "When the Board is not in session, the individual members thereof shall be subject to the direction of the President" (207).

Sections 3 and 5 give the President power to appoint and discharge the Organizers, whose duty it is to eliminate the open shop. Section 7 of this Article further provides:—

> "He [the President] shall interpret the meaning of the International Constitution, but his interpretation shall be subject to repeal by the International Executive Board" (205.)

In September, 1915, there came before the National Executive Board the question of granting financial aid to West Virginia.

From the minutes of the Board relating to this action (which were not in the first record) it appears (2215), that Board Member Haggerty offered to withdraw the appeal "with the understanding that if, between Board meetings, the President of the International Organization, *under his prerogative as President*, deemed it advisable to grant financial assistance to West Virginia, that could be done."

The further discussion by President White and Board Member Harlin, is significant in the present connection:—

> "PRESIDENT WHITE:—I have been lenient with my prerogatives and have always recognized that I was but the servant of the Board, who are all in turn the servants of the organization. I do not understand

that the Committee's report in any way with the prerogatives set forth in the constitution, devolving upon the President.

"BOARD MEMBER HARLIN:—* * * So far as I am personally concerned, I do not believe I would have the authority to attempt to curtail the **well recognized authority of the President between Board meetings. In every case that arises between Board meetings, it is the prerogative of the Presid t to exercise his judgment, subject to review by the International Board."**

The statement thus made in the Board meeting and acquiesced in by all the members as a basis for their action, did not apply merely to the particular case then under discussion, but was evidence for the jury as to the prior adoption of a *general rule* and practice, which the Board recognized as having *always* been followed by them and by the President, on whom the entire membership, under the Constitution, had conferred the broad power of interpreting the Constitution.

If Board Member Harlin had himself testified in the second trial that, according to recognized usage, and by the Board's construction of the Constitution, the President had the interim powers specified, the conclusion would not admit of argument. Yet the foregoing is competent, although perhaps less direct evidence, to the same effect.

Judge Kenyon's comment on White's remark that he is always the servant of the Board, as weakening the effect of this testimony, merely emphasizes the fact that such weakness was properly to be *appraised by the jury* to determine whether or not, *according to the recognized usage of this organization,* as practiced by those on whom the membership conferred express power to interpret the National Constitution, the National President, between Board meetings, was vested with the powers of the Board, subject only to review by them.

4. The Destruction was not a Mere Incident in a Local Strike, President White's Order therefor being Independent of the Existence of any Strike.

From the testimony in the original record it appeared that the destruction of plaintiffs' property occurred, so far as the National Body was concerned, merely as an unforeseen *incident in a local strike,* ordered by the local officers, and involving a purely Local Issue, with which the National Body was only remotely concerned.

In the present record there is new testimony from which the jury might properly find not only that the issue involved was a National Issue and that the purpose of the conspirators was the furtherance of the basic National Policy, but that, so far as the National body was concerned, the attack did not occur as an incident in a strike, but as the proximate result of an order by President White, issued irrespective of the existence of any strike, Local, General, or otherwise.

Under the new circumstances shown, the jury might well have concluded that White would have given precisely the same directions to McNamara and Slankard if no Union man had ever before been employed by Mr. Bache. The specific reasons given by White as to why the Union must prevent the shipment of plaintiffs' coal would, it is submitted, have been equally applicable had the mines been opened for the first time in April, 1914, employing all non-union men as their initial working force.

In the present record it does not appear that any strike order was issued, either by the District or National Board or officers, or by any other authority. On the contrary, the jury would be justified in concluding, from the new testimony in the present record, that no such order was given.

Nor was any order necessary to forbid Mr. Bache's former union employees to continue working in the

open shop operation. Section 10 of Article XIV of the National Constitution provided that "any member going to work in a non-union mine shall forfeit his membership" (218).

At the second trial District Board Member McLachlan (since National Representative) admitted on cross-examination that, under the laws of the Union, no strike order was necessary to call out the men at Prairie Creek (*supra*, p. 69).

The cessation of work at Prairie Creek was automatically ordered by the terms of the National Constitution.

The Constitution clearly imposes on the President, as the principal executive officer of the organization, the duty of carrying out its basic policy of protecting the membership against the menace of the open shop. By the Constitution the President is given express power to "appoint such organizers, field and office workers as may be necessary to conduct the affairs of the International Union." (Art. IX, Sec. 5, p. 204).

Between Board meetings the activities of the individual Board members are subject to the direction of the National President, and, according to the Board's own interpretation, the Constitution gives him all the interim powers of the Board.

To what end is he placed in charge of the organizers, and for what purpose are the individual Board members subject to his orders?

Clearly to carry out the objects of the organization, to attain its ends, to increase and protect its membership and power, by the means which precedent had established in the organization.

When an open shop operation was threatened, it was peculiarly within the President's province to see that a stop was put to it. By the past practice of his organization he was given a clear guide as to the methods sanctioned.

In its prior opinion this Court called attention to the fact that "the President had not authority to order or ratify a local strike. Only the Board could do this" (259 U. S. 394).

But White did not call or ratify a Strike, General, Local or any other kind.

He simply ordered his subordinates to take the necessary steps to prevent plaintiffs' coal from getting into the markets served by Union operators.

This is not merely a case where the National officers approved of the calling of a strike in the course of which the local people did something which the National Body had not contemplated. Irrespective of the existence of any strike, the National President, in direct furtherance of the business of the National, ordered the doing of the very thing for which it is now sought to make the National Funds pay.

Plaintiffs' damages were not suffered as the result of White's telling the local men not to work any longer for plaintiffs, but as the result of his telling them, in the furtherance of the business of the organization, to take the necessary steps to keep plaintiffs' coal out of interstate commerce.

Although as applied to the District, the attack may still be viewed as an incident in a strike, as far as White and the National was concerned, it can no longer be so regarded. It was the specific and proximate result from the express orders of National President White that plaintiffs must be prevented from shipping coal, and that when they were ready to do this, "then it was time to act."

Can such an organization delegate to its principal executive officer powers such as those given to the National President, including express power to "interpret the meaning" of its Constitution, and then escape responsibility for the zealous exercise of such powers by him in its behalf, merely because of a supposed limitation in such Constitution upon a power under

which, in this instance, the President does not profess to act?[18]

Suppose that President White had himself testified on the witness stand that he had ordered the destruction of plaintiffs' mines, independent of the existence of any strike, for the express purpose of preventing plaintiffs' coal from reaching the interstate markets served by the Union operators, with whom the Union was allied. Suppose further that he had testified that this was the primary policy of the Union, pursuant to which it had destroyed property for years in a similar manner and for the same purpose and with the approval of the Executive Board and the entire organization. Could it then be said that the National would not be liable unless it was further shown that this particular destruction was an incident in a strike, and that such strike had been expressly sanctioned by the Executive Board as shown by a certified copy of their minutes?

Yet the jury would be warranted, it is submitted, in finding from the testimony in the present record that plaintiffs' property had been destroyed pursuant to the direction of President White, issued for the above purpose and under the above circumstances.

From this Court's former opinion it would appear that the responsibility of an unincorporated association

[18]Suppose it had appeared that National Treasurer Green had paid, with the check of the National body, the compensation which the jury might well find that National President White promised McNamara and Slankard for their services "for every day you are in this trouble," or suppose he, instead of District Treasurer Holt, had paid the fines and Court expenses of defending the participants who pleaded guilty. Would it be necessary for plaintiffs to go farther and to show, by direct testimony, that such payment had been authorized by the National Executive Board?

Would the failure by the Executive Board to call Treasurer Green to account of itself amount to a ratification of such payment? It would so appear. But the National Board had equal power to call the District and Local Branches to account for "using their funds for other than legitimate purposes" (see Section 25, Art. XIV of the National Constitution, p. 220) and to forfeit their charters and absorb all their funds if they acted contrary to its policy (*supra*, pp. 65-6).

for acts done by its agents is determined by the same principles as those established by the decisions[19] in the case of corporations. This Court said:—

> "A corporation is responsible for the wrongs committed by its agents in the course of its business and this principle is enforced against the contention that torts are *ultra vires* of the corporation. But it must be shown that it is in the business of the corporation. Surely no *stricter* rule can be enforced against an unincorporated organization like this" (259 U. S. 395).

Suppose White had been President of the Standard Oil Company and District 21 had been a subsidiary company with different officers and directors, but controlled through entire stock ownership by the parent company. Assume further that White, in his desire to eliminate a dangerous interstate competitor, had come to Fort Smith and had given to the officers of the subsidiary company the same directions that White gave McNamara and Slankard, which directions they had followed and in so doing had destroyed plaintiffs' property.

Could there in such case be the slightest doubt that the parent company would be held liable as a co-conspirator? Or could it escape this merely because its attorneys had inserted in its by-laws and in those of the subsidiary a provision confining the power to order the eliminating of competing plants to the Board of Directors, provided what the President did was in furtherance of the business and policy of the parent body as defined by prior activities?

In the Hitchman case, 245 U. S. 229, 247, relative to a similar contention by these same defendants, but where the Union Officer in question was not the National President but a mere organizer, this Court said:—

---

[19]Rogers *vs.* Vicksburg R. Co., 194 Fed. 65;
Martin *vs.* Webb, 110 U. S. 7;
Denver & R. G. R. Co. *vs.* Harris, 122 U. S. 597, 608;
N. Y. C. & H. R. R. Co. *vs.* U. S., 212 U. S. 481, 493-4.
Bank *vs.* Dandridge, 12 Wheat. 64.

"The question whether Hughes had 'power or authority' to shut down the Hitchman mine is beside the mark. We are not here concerned with any question of *ultra vires,* but with an actual threat of closing down plaintiff's mine, made by Hughes while acting as agent of an organized body of men who indubitably were united in a purpose to close it unless plaintiff would conform to their wishes with respect to its management * * *."

5. The Destruction was a Step in a Preexisting Conspiracy, of Nation-Wide Scope, to which the National Body and District 21 were both Parties.

The complaint alleged a long standing nation-wide conspiracy by the National Organization of the United Mine Workers and all its District and local branches, the purpose of which was to monopolize all interstate traffic in coal and to subject it to the control of the Union and to prevent all such traffic in coal not mined pursuant to Union regulations, in which broad conspiracy the attack on plaintiffs' property was a step or part.[20] The complaint also alleged that this attack on and destruction of plaintiffs' open shop operation in Arkansas in 1914 by defendants in itself constituted a conspiracy in restraint of interstate commerce, irrespective of the existence of the broader nation-wide conspiracy.

At the first trial plaintiffs did not attempt to show the development of such long-standing nation-wide conspiracy, but confined their proof to the smaller conspiracy in Arkansas in 1914, and offered no testimony to show the translation of the General Policy into actual practice prior to the attack on plaintiffs' mines in Arkansas in 1914. Plaintiffs then proceeded on the theory that, irrespective of the prior existence of a nation-wide conspiracy, and aside from the question of attempted monopoly, the commission by the District officers of the overt acts in Arkansas in 1914, was of

[20]Complaint pars. 16 and 17 (Rec., pp. 16-17).

itself sufficient to establish a cause of action under the Anti-Trust Act against the National body.

While this Court reversed the original judgment for lack of sufficient direct proof in the first record, it did not in any way hold or intimate the insufficiency of the complaint, which was much broader than plaintiffs' original proof.

On the second trial, plaintiffs did not confine their proof to the Arkansas situation, but offered to prove the nation-wide conspiracy in which the National Organization had been engaged continuously for many years. Here, for the first time, plaintiffs were prepared and offered to prove the monopoly allegations in their case.

Plaintiffs supplemented the documentary proof admitted at the first trial as to the development of the General Union Policy by much additional evidence from Convention proceedings and Journal Articles relating to the purpose of the organization of Colorado and Alabama, and by oral testimony of operators and of a former President of District 21, as to the purpose of the Colorado campaign against the open shop.[21]

This testimony was clearly competent on which to base the conclusion that the closed shop campaigns conducted by the National organization in Alabama in 1908[22] in Irwin, Pennsylvania, in 1910-1911,[23] in West Virginia in 1912-1913,[24] and in Colorado in 1913-1914,[25] were motivated by the primary purpose of increasing the cost of production of the open shop mines in these States and thus protecting the Union operators in the interstate markets reachable by them.

To complete their proof of the Nation-wide conspiracy, it was accordingly material for plaintiffs to show unlawful overt acts done in carrying it out, and to show, by

[21] See extracts Appendix A, pp. 38a, 41a, etc.
[22] 494-5, 501, 307, 1530, 1535, 1538.
[23] 303, 305-6, 306.
[24] 295-333.
[25] See Appendix A, pp. 38a, 41a, etc.

direct proof or by circumstances, that the destruction of plaintiffs' business and propery in Arkansas in 1914 was a step in pursuance of such conspiracy.

At the second trial plaintiffs offered to do this, the scope of the offers being as broad as the allegations of the complaint.

The offers were all rejected by Judge Pollock, on the ground that they introduced collateral matters, Judge Pollock overlooking or refusing to consider the broad allegations in the complaint on which the offers directly bore, and evidently failing to realize the impossibility of proving a continuously operating conspiracy of Nation-wide scope if the proof be confined to a single state and a single year.

In its prior opinion this Court said:—

> "It was necessary, however, in order to hold District No. 21 liable in this suit under the Anti-Trust Act, to establish that this conspiracy to attack the Bache-Denman mines and stop the non-union employment there, was with intent to restrain interstate commerce *and* to *monopolize the same*, and to subject it to the control of the Union" (p. 403).

The rejected offers for the first time introduced into the evidence the monopoly idea, which could be proved in no other way than by proof of the unlawful steps which the Union had already taken to secure the monopoly over coal and the subjection of the same to its control.

By refusing the offers, Judge Pollock deprived plaintiffs of the only possible means of proving a fact, the proof of which this Court thus stated would have sustained our case.

The offers comprised both oral testimony of witnesses, and articles from the United Mine Workers Journal.

Plaintiffs are entitled, for the purposes of the present writ of error, to have the benefit of every fact which the rejected evidence would have established, as well as of every reasonable inference deducible therefrom.

Corsicana Bank *vs.* Johnson, 251 U. S. 68, 72.

The question first arose when plaintiffs had called to the stand Mr. H. L. Good, who, as the questions show, was personally familiar with the events in the campaign against the open shop conducted by the National body in the Irwin field in Pennsylvania in 1910 and 1911, as well as with the methods used by defendants in conducting this strike and in concealing their complicity by the same misrepresentations as to the attacks by the guards as constituted a feature of the "plan" arranged by White and Stewart to prevent plaintiffs' shipments.

After Judge Pollock had sustained about a dozen objections to questions asked of Mr. Good, counsel for plaintiffs made the following offers of proof,[27] objection to which the Court sustained, to which exception was taken and which was assigned as error in the Court below and in this Court.

> "I offer to prove by the witness on the stand and other competent witnesses that in the years 1910 and 1911 a strike was conducted in the Irwin field of Pennsylvania, endorsed by the National organization of the United Mine Workers, that the purpose of that strike was to organize the then open shop mines in that district, for the purpose of protecting the operators operating union mines in adjoining states, that that strike was conducted with violence, intimidation, deliberately by the United Mine Workers for that purpose, that the national organization knew and approved of these matters, that this was a step in a nation-wide conspiracy conducted by the United Mine Workers in all of the districts, and the members thereof, for the purpose of throttling non-union coal, or open shop coal, and keeping it out of interstate commerce.
>
> * * * * * * *
>
> "We offer to prove by this witness and other competent witnesses that during that strike the United Mine Workers deliberately conducted a campaign of

[27] 1833, 1834, 1835. Extracts already admitted, showed the purpose of the Irwin Strike. See 303, 305-6, 306, etc.

publicity with the intent to deceive the public into believing the facts to be different from the facts deliberately circulated to the public, for the purpose of inflaming the miners of the districts, and getting a public opinion on their side, and that this was a part of the conspiracy in question, and further that the system of publicity, their methods or acts, and the whole matter of conducting the strike was of such a nature as to show on their face a similarity with the methods employed in the strike in 1914, as to produce the inevitable conclusion that it was all a part of the same scheme and conspiracy.

* * * * * * *

"I further offer to prove by this witness the facts alleged in paragraphs 15 and 22 of the complaint."[28]

Plaintiffs next called the witness, Carney, who as the preliminary questions to him show, had been the local Union leader in the campaign conducted against the open shop by the National body in West Virginia in the years 1912 and 1913,[29] and who was prepared to tell all the facts relative thereto, including the similar methods used by the defendants, and also the complic-

[28]Paragraph 15 of the Complaint is that which alleges that the Union mines already produce 60 per cent. of the coal mined in this country and that if the Union were successful in carrying out their conspiracy to organize all the bituminous coal mines of Pennsylvania, West Virginia, Virginia and Colorado, as "hereinafter" set forth, then the United Mine Workers would control "about 90 per cent. of the bituminous coal produced in the United States which enters into interstate trade and commerce and if the United Mine Workers of America were successful in all the attacks which it has made in different districts upon non-union mines in furtherance of said unlawful conspiracy, the said combination would have substantially a complete monopoly of Interstate trade and commerce in coal in the United States and the amount of non-union coal which entered into interstate commerce would be negligible" (p. 16).

Paragraph 22 is that which specifically describes the campaigns in Irwin, West Virginia, Colorado "and other states in order thereby to prevent said companies (the open shop operators) from shipping non-union coal for interstate trade and commerce" (pp. 19-21).

[29]The Record already contained voluminous proof as to the purpose of this campaign. See 295, 333.

It was these extracts, in the former record, which this Court referred to as establishing the General Policy.

ity of the National organization, both in the unlawful acts committed and in the elaborate and deliberately false propaganda designed to deceive the public and to protect the organization from blame. There, as in Arkansas, the local people did the active fighting and burning, and the National body covered up the tracks.

After a number of objections had been sustained to questions calling for answers as above, plaintiffs made the following offer of proof, objection to which was sustained, excepted to and duly assigned as error in the Court below and in this Court:—

> "I offer to prove by the testimony of this witness and other competent witnesses, that the facts disclosed by the testimony of the witness in answer to the question suggested would, on their face, be of such a nature as to result in the inevitable conclusion that the strike there conducted was part of a fixed purpose and set design, by agreed upon methods, for the suppression by the United Mine Workers, in combination with all its districts and members and local unions, to prevent non-union coal from being shipped to other States in competition with that mined by Union operators in those other States, for the purpose of increasing the cost of production in the non-union mines, and for the purpose of protecting the union operators and the relations between the mine workers and the Union operators in such other States." (1852-3.)

The same procedure was followed in connection with offers of proof as to the open shop campaign in Vancouver[30] in 1913-1914, and that in Colorado[31] in 1913-

[30] 1844-1847. The articles from the Journal relative to Vancouver advertised as martyrs, without a word of disapproval, 82 different union men who had pleaded guilty to acts of unlawful violence in this strike. President White testified that he had never heard of any Union member or local Branch being disciplined within the organization for unlawful violence or destruction of life and property in a labor dispute, and that he knew of no publication by the Journal of the fine, suspension or expulsion of any member by his Local or by any higher Branch for this cause. White 254-257; see also McLachlan, 2157-61; McNamara, 944.

[31] The record already contained voluminous proof to the effect that the purpose of the Colorado campaign was to increase the price charged

1914, these two continuing coincident with the campaign at Prairie Creek. Plaintiffs offered and Judge Pollock similarly rejected a mass of extracts from the United Mine Workers Journal for the same purpose.[32] We quote for example the offer in connection with the articles on the West Virginia campaign:—

"MR. DRINKER:—I offer in evidence the following articles from the United Mine Workers Journal for the years 1912 and 1913 for the purpose of proving the facts sought to be proved by the questions to the witness just on the stand; and for the further purpose of proving that the strike in West Virginia in 1912 and 1913 was planned and conducted by the National organization of the United Mine Workers in conspiracy with the members of that organization and its district branches and local branches for the purpose of preventing the shipment in Interstate Commerce of coal mined in non-union and open shop mines in West Virginia and so that such coal might not come in competition with the coal mined by union operators in Ohio, Pennsylvania, Indiana and

for coal by the Colorado operators so as to protect the Union operators in District 21 and the other Districts within reach of Colorado. See Appendix A, pp. 38a, 41a, 42a, etc.

[32]The Colorado articles particularly are replete with the same statements relative to the "armed guards and thugs," assaults and insults to women and girls, and railing at the authorities for keeping the peace, as constituted the plan devised by White and Stewart to destroy plaintiffs and at the same time escape responsibility therefor.

In the Articles of May 8, 1914, it appeared that the Union men in Colorado wore white handkerchiefs around their arms to enable their friends to distinguish them. This was, as it were, their uniform. It was also the uniform of the Union men in the Battle of July 17 at Prairie Creek, and so testified to by half a dozen different witnesses (554, 584, 600-601, 666, 805, 806, 807, 1901-2).

"12 Die Before U. S. Brought Peace.

Walsenburg, Colo. May 1, 1914.

Peace again reigned here and the 160 strikers who made it so hot for the militia in a three-day battle that General Chase sued for a truce over the 'phone from Denver have returned to their homes, taking their guns with them.

The total dead in the fighting was ten gunmen, one militiaman and one striker, who was shot by his friends when he lost the identifying *white handkerchief* they all wore on their arms" (1893).

other States than West Virginia, for the purpose of increasing the cost of production of the West Virginia non-union or open shop operators, in order to interfere with such shipments; for the further purpose of showing a thoroughly conceived system of camouflaging the public as to the true purpose of such events, and in order to keep public opinion on the side of the mine workers; for the purpose of showing in connection with the testimony of the witness just on the stand a deliberate circulation by the United Mine Workers of description of events known to be false, circulated for the purpose of deceiving the public and the authorities in connection with those events; for the further purpose of showing, by the publication by United Mine Workers International Executive Boards of these known false statements, and a deliberate incitement to the District organizations throughout the country to stop, by all necessary methods, legal or illegal, the shipment of non-union or open shop coal in Interstate Commerce, wherever such was necessary to carry out the prime purpose of the organization to unionize every non-union mine in the country, regardless of methods or cost." (1853-4.)

A sample of the Articles relative to Colorado is that in the issue of April 30, 1914, reproduced in Appendix C p. 133a.

At the outset of this branch of the case in order to make plaintiffs' position entirely clear on the record, counsel for plaintiffs made the following general statement, which Judge Pollock treated as an offer of proof and, on defendants' objection, excluded with an additional exception, duly assigned as error in the Court below and in this Court:—

"We are going now to prove the allegations of the complaint that this strike down here was merely a part of a nation-wide conspiracy to throttle non-union coal in interstate commerce. The conspiracy began way back. Plaintiffs allege these incidents, and have skipped a large part of the first ones, and we now call this man to show what happened in the Irwin

strike, that was run by the national organization, and then we are going to West Virginia and show what happened there, and in each case with one witness or two, and then out of the journals, articles to show that this was a conspiracy between the national organization and the districts to throttle non-union coal in interstate commerce. * * * We want to show there was a continuing conspiracy between the national organization and the officers thereof, and the district organization and their officers and everybody connected with this organization, to throttle non-union coal in interstate commerce" (1831-2). * * *

As heretofore stated, Judge Pollock's reason for rejecting the offers to prove the nation-wide conspiracy and attempted monopoly, was that to allow such evidence would introduce "collateral issues" which would unduly prolong the trial.

This ruling overlooked the fact that the strikes at Irwin, West Virginia, Vancouver and Colorado were in no sense "collateral issues," but, according to the specific allegations of the complaint, in themselves constituted the formation and development of the unlawful conspiracy on which plaintiffs' cause of action was based, of which conspiracy the destruction of plaintiffs' mines, so far as the present case is concerned, was the final step.

While it is, of course, recognized that, in conspiracy cases, a trial Judge may exercise a proper discretion in preventing an undue cumulation of proof of events already shown by other competent testimony, the Trial Judge cannot exclude evidence as cumulative until the record contains competent proof sufficient to establish the existence of a conspiracy of the type alleged.

What Judge Pollock did was to exclude all our direct proof of the Nation-wide conspiracy and attempted monopoly, and then direct a verdict against us because we had failed to introducee proof to sustain these allegations.

In all the Anti-Trust cases it is essential, in order to be in a position to apply the Rule of Reason, to know the history of the growth and acquisition of power by the combination under scrutiny.[33] All considerable combinations operate more or less to restrain commerce and competition, but this is not unlawful unless such restraint is unreasonable. In determining this question in regard to any combination of capital, in equity cases, the Court invariably reviews its past in order to apply the test of reasonableness. Did the combination acquire its power normally, by natural growth, by increased efficiency, and by the elimination of waste through cooperation, or did it attain its dominating position primarily by interfering by unlawful means with the lawful business of its competitors, and by destroying those who, by their legitimate activities, interfered with its economic program and disputed its domination.

Obviously the same facts which are necessary for the consideration of the Court in equity cases are also necessary for the jury in civil suits for damages, where the preliminary question is whether the combination is one which unreasonably restrains trade.

Although it is doubtful whether, at common law, it was lawful for laborers to combine to exact higher wages and so increase prices (as it was unlawful for capital to do), the Clayton Act has apparently insured to Labor Unions this right and advantage *under certain specified conditions.* They may now collectively refuse to work for any one who will not pay them the wages demanded, but only provided their primary purpose is a lawful one and provided only lawful means are used to attain it.

[33]Thus in both the Standard Oil and American Tobacco cases, the Court found, from a history of defendants' activities, going back for many years, that the specific purpose of the conspiracy was to restrain commerce (221 U. S. 1, 47-48, 57-58, and especially pages 75 to 77, where this evidence is reviewed; 221 U. S. 106, 165-6, 179, 182); see also Lumber Co. *vs.* U. S., 257 U. S. 377, 411-12.

The Clayton Act (38 St. 730-1) specifically restricts the special dispensation thus accorded to cases where such organizations are "*lawfully* carrying on their *legitimate* objects."

> "It [restraint of commerce] is not to be justified by the fact that the participants in the combination or conspiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute."
>
> Duplex Co. *vs.* Deering, 254 U. S. 443, 468.

Where a labor union calls a strike at an open shop mine for the purpose of increasing the wages and improving the conditions at that mine this is unquestionably a "legitimate object" and if no unlawful means are used, the Clayton Act protects them.

When the primary purpose of the union is not to benefit the men employed at the mine on strike, but to protect those at other mines employing union labor, by increasing the price charged in the interstate markets by the open shop employer, then, *if the strikers still employ only lawful means,* a question is presented which it is not necessary to decide in this case. If a manufacturer were shown to have instigated a strike in the plant of a competitor by mere persuasion, but for the express purpose of raising the cost of his competitor and of lessening his ability to compete in their common interstate markets, it would seem that this was unlawful, even though no deception or unlawful means were used, since the *specific purpose* of the manufacturer was to *prevent interstate competition.* Whether or not the Clayton Act justifies a different rule for Labor Unions need not here be decided,[34] since, in the case of all the campaigns covered by the offers, flagrantly *unlawful means* were used.[34]

[34]The campaign against the Hitchman Company involved in Hitchman Coal Co. *vs.* Mitchell, 245 U. S. 229, as explained in the Tri City case (257 U. S. 184, 211) was part of a "plan to bring the employees of the complainant company and all the West Virginia mining com-

In order to decide whether defendants were within the ban of the Sherman Act or were within the special dispensation of the Clayton Act, it was thus essential to ascertain, from the history of the acquisition and use of their power, whether it has been acquired normally, by the use of its collective power peaceably to refuse to work, or by the use of its collective power by unlawful means to damage the competitors of the quasi-partnership between the union miners and their employers.

Obviously this information could be obtained only by the admission of the rejected offers.[35]

It has never been held that, in proving a conspiracy and attempted monopoly in restraint of commerce, or for that matter any other conspiracy, it is necessary to show *by direct evidence* the connection of each act with every other act relied on. It is usually the combination of a number of what at first sight seem isolated occurrences which justifies the inference of the common purpose. Where as here, the same intent is directly shown to be common to all and it appears that all were directed by a central force toward the accomplishment of a common object, the similarity of methods used is sufficient to lead the jury to find that each is a step in the fulfillment of the conspiracy which the whole combination of events constitutes.

---

panies into the International Union, so that the Union could control, through the Union employees, the production and sale of coal in West Virginia, in competition with the mines of Ohio and other States. This Court said of it:—

"This Court held that the purpose was not lawful, and that the means were not lawful and that the defendants were thus engaged in an unlawful conspiracy which should be enjoined" (p. 211).

[35]Where a judgment has been obtained by the Government that a given combination is one in restraint of trade, Section 5 of the Clayton Act (38 St. 731) makes this judgment *prima facie* evidence in a subsequent civil suit by one who has been injured by the combination. Clearly a plaintiff who has not the benefit of such a prior judgment must have the right to prove the illegal nature of the combination by the same methods of proof which would be employed on behalf of the Government.

A review of the evidence relied on by the Court in the leading Anti-Trust cases, such as the Standard Oil Case (221 U. S. 1, 47-48 57-58, 75-77) or the American Tobacco Case (221 U. S. 106, 165-6, 179, 182) makes this clear.

It is by the very succession of a number of seemingly independent acts, done under a common direction, that the unlawful purpose is inferred. Thus in the Tobacco Case the Court found from the fact of the successive closing of competing plants, lawfully acquired, a purpose to restrain interstate commerce (221 U. S. at 165-6, 183), **although a tobacco plant, of itself, is no more an instrumentality of commerce than a coal mine.**

In the case at bar, however, the common purpose motivating all the acts, is shown by direct evidence.

While each of the overt acts going to make up a conspiracy such as here alleged is in a sense collateral to the others if viewed separately, the common design, the conspiracy, itself connects them together and makes them part of one all embracing event.

The relevancy of this rejected proof of the nation-wide conspiracy and monopoly, as bearing on the liability of the National Organization in this case, is apparent.

On the first record the destruction of plaintiffs' property appeared as an isolated and sporadic event, originated and carried out solely by the local members, pursuant to a private controversy, with which the National body was only remotely concerned. The question there presented to this Court as to the liability of the National body was merely whether, in that particular case, these isolated acts were done with its specific authority and under its direction.

Now, however, the events at Prairie Creek take their place as a step in the broader march of events, originated and carried on by the National body for its purposes.

In this nation-wide conspiracy, the several District and Local Branches as well as the National President is each assigned to his proper part, looking to the attainment by them all, by the methods approved by past practice, of their common objective.

Thus the National body becomes the dominating conspirator, always present and directing its subordinate District Branches wherever the opportunity offered for the attainment of the common objective.

Summary of New Proof at the Second Trial Relative to the Liability of the National Organization.

The testimony introduced and offered by plaintiffs at the second trial would, it is submitted, have warranted the jury in making each of the following findings of fact:—

1. That the destruction of plaintiffs' property was the result not of a mere local quarrel, but of the prosecution of the recognized business and General Policy of the National body to protect its allies, the Union operators, by preventing the shipment of open shop coal to the competitive interstate markets; that the cessation of work by the Union members at plaintiffs' mines resulted not from a strike order issued by either the District or National officers, but automatically from a provision of the National Constitution prohibiting all members to continue working at mines employing non-members; and that it was the duty of the District Branches, as functioning parts of the Main Organization, to prevent any Union mine from turning open shop.

2. That such destruction was instigated and ordered, not merely by the officers of District 21, but that it was the direct and proximate result of an order of National President White, pursuant to a plan formulated by him for the express purpose of preventing the shipment of plaintiffs' coal to other States; that the powers dele-

gated to the National President by the Constitution have been greatly enlarged under the authoritative construction of that instrument by the parties on whom it conferred the express power to interpret it.

3. That the National Executive Board had participated in the conspiracy by publishing in the Official Journal an Editorial containing a consciously false account of the occurrence, designed to conceal the part played therein by defendants, such misrepresentation being a part of the plan of the conspirators to secure the desired result without responsibility therefor; and that the Executive Board, by expressly approving such destruction by the Union, coupled with an excuse which it knew to be false, had ratified the acts of the other defendants done pursuant to President White's directions.

4. That the issuance of such order by President White had nothing to do with the initiation of a strike, was wholly independent of the existence of one, and was not pursuant to any supposed power by the President to order or ratify a strike, local or otherwise; that, on the contrary, such plan was formulated and such order issued pursuant to the recognized business, duty and power of the National President to organize all non-union mines or prevent their operation and thus to protect and expand the membership, power and existence of his Organization and prevent the severance of relations between the Union and the Union operators; that such severance of relations was universally recognized by White and his fellow unionists as the inevitable result of permitting plaintiffs to ship, to the markets of such operators, the tonnage which White and his fellows knew they could presently produce if unmolested by the Union.

5. That the destruction of plaintiffs' open shop operation no longer appeared as a mere local, sporadic or insolated occurrence, but was a step in an unlawful nation-wide conspiracy; that this conspiracy was begun years before, had continually gained momentum by the consummation of similar attacks, prosecuted by similar lawless method, during the four years immediately preceding 1914 and coincident therewith; that such conspiracy had as its ultimate object the monopolistic control by defendants of the production and distribution of coal throughout the United States, and had as its immediate object the maintenance or increase of prices for coal in the interstate markets served by the open shop operators so attacked; and that the approved and agreed on method of attaining this object was by preventing the shipment to such markets of any coal not mined under Union domination and under the expensive operating conditions which the Union prescribed.

Plaintiffs' case against the National Body would, it is submitted, be sustained by competent proof warranting any one of the above findings. At the second trial plaintiffs offered new and competent testimony warranting the jury in making not merely one, but all five.

If, under the proof here presented, including that in the rejected offers, the National body can escape liability; if the District and the Locals, which the National can manipulate or dissolve and whose funds it can confiscate at will, are to be the sole parties from whom redress can be obtained, it would seem that the United Mine Workers will have little cause to fear the consequences of similar unlawful activities, and little reason to abstain from the unlawful restraint of interstate commerce which it was the purpose of the Sherman Act to prevent.

POINT III.

THE REJECTED OFFERS TO PROVE THE NATION-WIDE CONSPIRACY AND MONOPOLY SHOULD HAVE BEEN ADMITTED.

In view of the foregoing argument, further extended discussion of the admissibility of the rejected offers is unnecessary.

They were admissible:—

(1) To prove directly the existence of the nation-wide conspiracy and monopoly which formed a specific basis of the complaint.

(2) To enable the Court to apply the Rule of Reason in determining, from a history of the development of the power of this association, whether it attained its present dominating position by natural growth and efficiency, or by unlawfully oppressing its competitors.

(3) To show, by the identity of purpose governing, and by the very extraordinary similarity of methods used,[36] that the campaign against plaintiffs' open shop in Arkansas in 1914 was motivated by the same central and unlawful purpose as inspired the similar campaigns conducted by the same defendants and by the same

[36]In New York Life Ins. Co. *vs.* Armstrong, 117 U. S. 591, 598, Justice Field said:

"Repetition of acts of the same character naturally indicates the same purpose in all of them; and if when considered together they cannot be reasonably explained without ascribing a particular motive to the perpetrator, such motive will be considered as prompting each act."

See also Wood *vs.* United States, 41 U. S. 342, 360;
Butler *vs.* U. S. 13 Wall. 456;
Clune *vs.* U. S., 159 U. S. 590;
Heike *vs.* U. S., 227 U. S. 131, 145.

"If intent, motive, knowledge, or design be one of the elements of the crime charged, and especially if it is claimed that the crime was committed in accordance with a system, plan or scheme, evidence of other like conduct by the defendant at or near the time charged is admissible."

Smith, *J.*, in Schultz *vs.* U. S., 200 Fed. 234, 237;

methods in Irwin in 1910-11, in West Virginia in 1912-13 and in Vancouver and Colorado in 1913-14.

(4) To show, by the continued advertisement of similar unlawful acts as the approved means of interfering with open shop operations, encouragement and authority to the officers and local members to use similar methods under similar circumstances.[37]

By the rejected offers of proof, including the offers of oral testimony as well as the extracts from the Official Journal for the years 1910-1914, plaintiffs, in the broadest terms, offered to prove a long continued course of conduct, directly participated in and approved by the National Executive Board, involving grossly unlawful acts of violence, coupled with consum-

[37]Spies *vs.* People, 122 Ill. 1; 123 U. S. 131;
Queen *vs.* Most, L. R. 7, Q. B. D. 244;
Regina *vs.* Sharpe, 3 Cox's C. C. 288.

In the Spies case, above cited, defendants had been convicted of the Haymarket murders merely for having caused inflammatory articles to be published.

In the course of the opinion the Illinois Court makes the following reference which is peculiarly appropriate to the Journal articles in the present case:—

"We do not wish to be understood as deciding that the influence of these publications in bringing about the crime at the Haymarket could be considered by the jury if they were the *only* evidence of encouragement of that crime, which was furnished by the record. We only hold, that the jury were at liberty to consider the publications in question in connection with all the other facts and circumstances of this particular case and as a part of those facts and circumstances, with a view of determining whether the defendants, who were responsible for their issuance, did or did not belong to the conspiracy now under consideration."

In the Sharpe case two speeches had been made to a group of people who subsequently engaged in the riot. Wilde, *C. J.*, in summing up, said:—

"I think it is not the hand that strikes the blow, or that throws the stone, that is alone guilty under such circumstances; but that he who inflames people's minds and induces them, by violent means, to accomplish an illegal object, is himself a rioter, though he takes no part in the riot. It will be a question for the jury, whether the riot that took place was so connected with the inflammatory language used by the defendants, that they cannot reasonably be separated by time or any other circumstances."

mate hypocrisy, in connection with numerous campaigns against open shop mines.

For the purposes of the present case it must therefore be considered as a proven fact that for years prior to the attack on plaintiffs' open shop operation, the National body had been conducting similar campaigns, accompanied by flagrantly unlawful acts of violence and characterized by similarly hypocritical concealment of responsibility, against many other open shop operations. Also that by publishing in its Official Journal accounts of such unlawful activities (many of which were coupled with no attempted justification other than necessity) the Executive Board had held out and advertised to its entire membership, from the president down, the course of conduct described as that of which it approved, whenever necessary to prevent the shipment of open shop coal to the markets served by the operators with whom the Union had closed shop contracts.

As illustrative of the effect of such inflammatory articles on the local membership, we refer to one striking example.

On April 30, 1914,—a week before McNamara's conversation at Fort Smith with District President Stewart, two weeks before National President White's instructions to McNamara and Slankard, about a month before the purchase and distribution by the District Officers of 400 high powered rifles, and ten weeks before their effective use in the Battle of July 17,—the Executive Board published an Article describing the events in the open shop campaign then being carried on by it in Colorado, for the protection of the Union operators in District 21, to which campaign the present testimony showed District 21 contributed $10,000 and the services of four organizers (1541).

This article is too long for reproduction here, but is quoted in full in Appendix D, p. 133a (Rec., 1883) as an example of those rejected by Judge Pollock.

The article describes, without attempted justification, excuse or apology, attacks by hundreds of Union men, armed with high powered rifles, against the properties of the Colorado open shop operators, many of whom offered little or no resistance. It pictures vividly the deliberate burning and destruction of such properties after their capture by the Unionists.

The National Constitution requires the Secretary of every Local Union to subscribe for and examine each issue of the Official Journal in order to bring all official notices to the attention of the members (221-222).

On May 5th, five days after the appearance of the above account, defendant Charlie Robinson, a local Union Secretary prominent at Prairie Creek, met Caldwell, one of plaintiffs' employees, at the injunction hearing in Fort Smith and told him "that there would be no danger until they went to hoisting coal," when "the place would be tore up."

"He said, *'You know what they done in Colorado,'* and he says *'the same thing will be done here.'* "

McNamara, himself, was Secretary of Local No. 1526 at Hartford (637, 1141).

He got his directions as to *what* he and his fellows were to do and *when* and *why* they were to do it, from National President John P. White.

He got his directions as to *how* they were to do it from the United Mine Workers Journal, published by and under the supervision of the National Executive Board.[38]

---

[38]Another Local Union Secretary, prominent in the preparations for the Battle and an active participant therein was Frank Scofield (1122) (855).

Cluck, one of the Union men who shot up Frogtown in pursuance of White's plan (955, 974-8, 981) and the man who wrote to the Journal describing the shooting as the work of the guards (982) was Secretary of his Local (981) and therefore filled with the Colorado articles. See his other article in the Journal (1040-41).

Red Doyle, another identified participant, was also a Local Secretary (1216).

CONCLUSION.

It is respectfully submitted that all the assignments of error should be sustained, and that the judgment should be reversed and the case remanded for a new trial against all the defendants.

JAMES B. McDONOUGH,
HENRY S. DRINKER, JR.,
EDWIN A. LUCAS,
For Plaintiffs in Error.

APPENDIX A.

PAGE

ANALYSIS AND ABSTRACT OF PRINCIPAL ITEMS OF TESTIMONY IN THE PRESENT RECORD SHOWING THE PURPOSE AND EFFECT OF THE CONSPIRACY IN RESTRAINING INTERSTATE COMMERCE AND COMPETITION 1a

I. The origin, development and general adoption by the United Mine Workers of the General Policy to protect the Union miners and operators against the invasion of their markets by non-union coal 3a

Summary of findings justified by the present record as to the execution by defendants in actual practice of the General Policy 15a

II. The adoption and application of such General Policy in District 21 and the recognition of its importance by Stewart and his accomplices 18a

(1) Extracts from debates in the Southwestern Joint Conventions of miners and operators relative to the application of this General Policy to Districts 21, 25 and 14, comprising the Southwestern field 18a

The operators' statement of 1910 ..... 22a

(2) Statements by Union Officers and delegates in Conventions of District 21 relative to the importance to that District of maintaining the General Policy 26a

The District 21 Convention of 1910 ..... 26a

The District 21 Convention of 1912 ..... 27a

The District 21 Convention of February 17, 1914 ..... 31a

(3) Oral testimony as to declarations by "Stewart and his accomplices," the direct participants in the destruction of plaintiff's property, showing their knowledge, appreciation and adoption of the General Policy as applied to District 21 ..... 35a

Ex-President Hanraty of District 21 ..... 36a

Local witnesses:

O. A. Brooke 42a

Harry Owens 43a

T. F. Lingo 43a

J. C. Peal 44a

Jake Ritchie 44a

PAGE

III. Declarations by Stewart and his accomplices at the time showing directly that their primary purpose was to prevent plaintiffs' coal competing with that of the Union operators..... 46a

James K. McNamara:

The conversations with Stewart and White..... 46a

McNamara's action pursuant to White's instructions..... 49a

White's ratification..... 50a

The speech of Stewart at Hartford during his trip through the Hartford Valley on May 25th. 51a

Additional extracts from McNamara's testimony 52a

Declarations of Union officers and members at Hartford, Midland, and Huntingdon between April 6 and July 17, 1914..... 54a

Hartford:

Dr. H. P. Routh..... 54a

T. F. Lingo..... 57a

O. A. Brooke..... 58a

Elmer Bohannon..... 59a

T. A. Hall..... 59a

Midland:

Wm. B. Tharel..... 60a

F. J. Holloman..... 63a

A. W. McGee..... 64a

Huntingdon:

J. L. Finney..... 65a

G. W. Skow..... 67a

IV. Circumstances indicating that Stewart and his accomplices were actuated by the General Policy in destroying plaintiffs' mines..... 68a

(1) The coincidence of the two attacks with plaintiffs' immediate readiness to ship coal..... 68a

(2) The intimidation of the Midland Valley Railroad repair gang..... 69a

F. J. Holloman..... 69a

(3) The independent destruction of the cars loaded with coal for shipment to other States..... 72a

(4) The failure by the Union men seriously to molest the little Looper open shop mine..... 74a

O. T. Looper..... 74a

PAGE

(5) The obvious effect on interstate commerce and competition of the destruction of an operation of the potentiality of plaintiffs..... 76a
The actual and potential output of plaintiffs' mines..... 77a
Plaintiffs' mines the second largest group in Arkansas..... 79a
Distinction between daily and annual output and capacity..... 81a
Corroborative circumstances as to the potentiality of plaintiffs' mines on prices in interstate commerce..... 82a
The saving in cost of production by open shop operation..... 83a
The factors entering into the competitive marketing of coal..... 85a
The expansion of market resulting from the foregoing saving in cost in open shop operation..... 93a
The distribution of plaintiffs' coal..... 93a
Mr. Bache's intention as to the reduction of the price of his company's coal..... 98a

V. New testimony warranting a finding that local bitterness against Mr. Bache, did not influence the conspirators.. 102a
Breach of contract..... 104a
Attempted "evasion" of contract by "manipulation" of Corporations..... 106a
Alleged "evictions"..... 109a
Alleged bitterness against strangers..... 110a
"Reduction in wages"..... 111a
Preparation against violence..... 113a
Additional animadversions against Mr Bache..... 113a

APPENDIX B.

TABULATION OF REASONS GIVEN BY EXPERT WITNESSES FOR THE LOWER COST OF PRODUCTION OF OPEN SHOP COAL..... 117a

1. Refusal to work when sufficient cars do not arrive promptly..... 117a
2. Funerals..... 117a
3. Refusal to do preparatory work on idle days..... 118a
4. "None can work unless all are working."..... 119a

PAGE

5. Refusal to do two kinds of work..... 119a
6. Arbitrary conditions or restrictions—One man in a room 120a
7. Difficulty of getting slope development..... 123a
8. Necessity of having as foreman an expert in wage disputes, irrespective of his experience in mining..... 123a
9. Unreasonable expense of changing to another system of mining..... 124a
10. Lack of control and discipline..... 125a
11. Impossibility of rewarding and promoting superior men 126a
12. Encouragement of antagonism and friction by Union Leaders..... 127a
13. Prejudice to mining machines..... 127a
14. Refusal to permit lease of entries with resultant close supervision..... 127a
15. Frequent strikes and impossibility of continuity of operation..... 128a

APPENDIX C.

ILLUSTRATIVE EDITORIAL AND ARTICLE PUBLISHED IN THE UNITED MINE WORKERS OFFICIAL JOURNAL..... 129a

1. Journal Editorial published by the National Board pursuant to White's "Plan."..... 129a
2. Article published April 30, 1914, describing events in the open shop campaign in Colorado..... 132a

APPENDIX D.

CHRONOLOGY..... 139a

APPENDIX A.

Analysis and Abstract of Principal Items of Testimony in Present Record Showing the Purpose and Effect of the Conspiracy in Restraining Interstate Commerce.

(See outline at beginning of the brief proper.)

The testimony which is abstracted and analyzed in this appendix is that which Judge Pollock, in his charge to the jury directing a verdict for defendants, characterized as "little scraps of testimony here and there." It has been thought helpful to the Court to collect together the principal items of such testimony and to arrange them in an orderly sequence, impossible in a trial record, so that their full momentum and significance, which Judge Pollock did not assess at the value which we think they possess, may properly be appreciated.

> "It hardly needs statement that the character and effect of a conspiracy is not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole."
>
> Mr. Justice Van Devanter in U. S. *vs.* Patten, 226 U. S. 525, 544.

The testimony is subdivided into five heads:—

I. The origin, development, and general adoption by the United Mine Workers of the General Policy to protect the Union miners and operators against the invasion of their markets by non-union coal (*infra,* pp. 3a-17a).

II. The adoption and application of such General Policy in District 21 and the recognition of its importance by Stewart and his accomplices (*infra,* pp. 18a-45a).

III. Declarations by Stewart and his accomplices at the time showing directly that their primary purpose

was to carry out such General Policy and prevent plaintiffs' open shop coal competing in interstate commerce with that mined by the Union operators (*infra,* pp. 46a-67a).

IV. New circumstances directly indicating that Stewart and his accomplices were actuated by the General Policy in this particular case (*infra,* pp. 68a-101a).

V. New testimony supporting a finding by the jury that the conspirators were not influenced by the causes of local bitterness suggested (*infra,* pp. 102a-116a).

I. The Origin, Development, and General Adoption by the United Mine Workers of the General Policy to Protect the Union Miners and Operators against the Invasion of their Markets by Non-union Coal.

The substance of the testimony under this first subhead was contained in the former Record, which, however, is fortified by additional extracts in the present record. As heretofore observed, such additional extracts are, from a legal point of view, cumulative, since they merely fortify a finding by the jury of the existence of the General Policy, as to which the record already contained sufficient testimony. Such testimony must be clearly distinguished from that later discussed, showing that the conspirators were actuated by the General Policy *in this particular case,* a matter as to which this Court held the prior record contained no competent testimony whatever.

As noted by this Court, the origin of the General Policy was in the Central competitive field and its inception and development was shown by extracts from the debates at the Joint Conventions held between the operators and miners in that field.

These Joint Conventions originated with the so-called Chicago Convention of 1898, at which was signed the first Union contract between the Union and the operators of the so-called Central Competitive Field (Illinois, Indiana, Ohio and Western Pennsylvania) providing for an increase of wages, the eight hour day, and, as construed in practice by the parties,[1] for the Closed Shop.

Article 8th of this Chicago Agreement provided as follows (193):—

[1]Although the Union contracts never specifically provide for the exclusive employment of Union men, they in effect do so, since the contracts do not require the Union men to remain at work, and the operator knows that their Constitution prohibits them from working with men not members of the Union (Art. XIV, Sec. 10, p. 218).

"That the United Mine Workers Organization, a party to this contract, do hereby further agree to afford all possible protection to the trade and to other parties hereto against any unfair competition resulting from a failure to maintain scale rates."

In the Joint Convention debates subsequent to 1898 this provision was explained by both operators and Union officers as meaning that, in consideration of the adoption of the closed shop and the grant of the concessions agreed to by the operators in the 1898 contract, the miners agreed to protect the Union operators from the "unfair" or open shop competition of the non-union mines whose cheaply mined product could reach the Union markets.

Samples of the statements in the present Record, so interpreting the agreement, are as follows:—

In the 1902 Joint Convention, Operator Robbins:—

"Four years ago, in the city of Chicago, we agreed to be in the advance guard on the question of an eight-hour day, with the distinct and absolute promise that unless our competitors were brought up to the same conditions that we would be put back where we were" (293).

Operator Bogle in the 1901 Convention (291):—

"At the Chicago Convention the United Mine Workers' Organization agreed with the operators of the four States that they would bring West Virginia into the fold. Again at Pittsburgh they promised the same."

National President Mitchell in the 1904 Convention (296):—

"Every year that we have met in these conventions we have heard the statement made that the reason the operators represented here could not comply with the scale of wages proposed with the miners was the fact that they were meeting an **unfair competition** from the Fairmount District of West Virginia."

Operator Maurer, in the 1910 Convention (307):—

"The granting of the eight-hour day by the operators, after making these numerous other important concessions, was **with the distinct understanding and explicit promise of the miners to give to the operators of the four contracting States adequate protection against the competition of the unorganized fields.** From year to year they have been called upon to fulfill that promise."

Defendant (National Secretary-Treasurer) Green in the 1910 Convention (308):—

"Let me point to the fact that the United Mine Workers of America have diligently and aggressively attempted to carry out the promise made in Chicago in 1898; that they have done everything in their power to redeem any promise they may have made to organize West Virginia. Since 1898 our organization has at various times spent hundreds of thousands of dollars trying to unionize West Virginia. We have also sacrificed human life in the attempt to redeem that promise.[2]

* * * * * * *

"I do not propose to attempt to defend the non-union fields of West Virginia. I know, as do the other miners on this side, that the non-union product of West Virginia is a serious proposition. As evidence that we recognize that fact, out of the meager earnings of the men on this side we have contributed month after month and year after year, to try to organize that field and bring them up to a competitive basis with our friends on this side" (315).

Pursuant to this provision in the agreement, as stated in the extracts above quoted, the operators continually

[2]Green goes on to state that the promise was coupled with the understanding that the operators would do their share toward eliminating the objectionable competition and that they had not done so; in other words, that there was an arrangement between them to unionize West Virginia for their mutual protection in the Central Field, which the miners alone had attempted to fulfill (309). See par. 15 of Complaint, pp. 15-16.

demanded that the Union men carry out their promise and protect them against the open shop competition, and the miners as continually reiterated their willingness and deplored their inability to fulfill the promise, calling on the operators to assist them and to co-operate with them in carrying out the arrangement, which, it will be observed, had as its specific object the increase of the delivered cost of the West Virginia open shop coal into the Union markets in the Northern States, in order to prevent such coal coming into competition with that mined by the Union operators.[3]

In this connection the following significant extract, not found in the previous Record, was admitted at the present Trial (292):—

> "Mr. Mitchell (President of the National Union): I don't know whether my conception of the relationship between ourselves and the operators is correct or not, but it appears to me that **where we are jointly interested in advancing rates in other fields we ought to work together where we can.** It takes money to organize. West Virginia coal is sold in competition with Pennsylvania and Ohio coal. This cannot be stopped until the miners there are organized, and it seems to me that it would be but fair for the operators to join this far, that they would try in every way in their power to help us organize these fields."

President Mitchell said the above, it will be remembered, to a Joint Convention of miners and operators.

The reasonable inference from these debates, it is submitted, is that the Union men regarded themselves as quasi-partners with the Union operators in preventing their mutual enemies, the non-union miners and opera-

[3]It may be noted that, although the former Record came to the Supreme Court after a verdict for plaintiffs, much of the testimony to which the opinion refers, as well as one of the extracts which it quotes, were from the testimony of defendants, which plaintiffs had contended, and which the verdict had seemingly branded, as disingenious and hence as not to be believed in determining the real purpose of the parties.

tors, from shipping their cheaper product into the Union markets.

The situation was thus summed up by National Vice-President T. L. Lewis, (from 1908-1911 National President) in the Joint Convention of 1901 (311):—

"We have attempted to the best of our ability to adhere strictly to every agreement that we have entered into. It is true that we have asked—you may put it in the form of a favor if you please—and in some cases we have insisted that the operators would not only recognize the **United Mine Workers as a business institution,** but that they would go one step farther and help us compel the rebellious of our own ranks to be parties to this compact. Not for the benefit of the miners, but for the benefit of the miners and operators jointly. Now let us see how much farther this movement must go to be successful. **As I understand it, it is for the purpose of wiping out competition between us as miners first, viewing it from our side of the question; next for the purpose of wiping out competition as between the operators in these four States.** When we have succeeded in that and we have perfected an organization on both sides of this question, then, if I understand the **real purpose of this movement, it is that we will jointly declare war on every man outside of this competitive field who will do anything in any way endangering the peace that exists between us.**[4]

[4]This passage would warrant the jury in questioning the prevalent idea that a Labor Union is a sort of Missionary Society whose sole consideration is the spreading of its blessings to outsiders. The United Mine Workers is and for years has been a most efficient business institution, whose primary purpose is to advance the interests of the members already enrolled by protecting them and their employers from their common enemy, the open shop employer and employee. The primary purpose of organizing new fields is first to afford this protection, next to provide increased revenue and power by increased membership. The benefit to the non-union men, so often and loudly proclaimed, is with the Union officers a negligible consideration.

For an interesting sidelight on the competitive conditions prevailing in the Central Field prior to these Joint Conventions and their purpose in alleviating this competition see the cross-examination of defendants' witness Taylor, pp. 1975-9; see American Column & Lumber Co. *vs.* U. S., 257 U. S. 377, 409-412.

> What is necessary to do this? Organize our forces in the competing fields so far as the United Mine Workers are concerned. Go into these outside competing fields and tell your competitors that they have to join this movement whether they like it or not, and give stabiiity to the coal business of the United States."

While, as stated by this Court, the previous Record did not specifically show that any reduction in wages had been made because of this contention by the operators, from the present Record it appears that such a reduction was in fact made in 1904.[5] It is also a reasonable inference that in every case the argument as to the competition of non-union coal was potent in preventing or ameliorating the increase which always formed the basis of the miners' proposition, at the outset of every Conference.

Without burdening the Court with full extracts from these Convention Debates, they show that it was asserted in substance by the coal operators during these Conventions, continuously from 1898 to 1914, that they could not continue to maintain the union conditions and pay the union scale of wages if these several competitive fields continued to operate under open shop conditions which enabled them to produce coal very much cheaper than it could be done under union conditions; and that unless the relative condition could be corrected, by increasing the cost of production in the competitive non-union fields to bring it up to the cost of the Union operators, the latter would not be able permanently to continue in the interstate joint movement.

Throughout the debates the miners and operators regard themselves as quasi-partners in their joint campaign to protect their markets against the inroads of open shop coal.

---

[5] 1434; see also pp. 297-8, for circular sent out to the rank and file by the National Officers recommending acceptance of this reduction.

In these Debates, then, we find the origin of the General Policy of unionizing the non-union mines, for the protection of the Union relations with the Union operators in the fields already organized.

The testimony further shows the general recognition of the importance of the General Policy by the Union officers and members and their adoption of it as essential for the growth and preservation of their organization. This testimony is contained in extracts from the proceedings in the Annual and Biennial Conventions of the Mine Workers (where no operators attended) and in Editorials and Articles from the United Mine Workers Journal.

General statements as to the adoption and recognition of this policy were offered from every National Miners Convention from 1902 to 1914.

The following extracts are typical:—

Committee Report adopted by the unanimous vote of the National Convention of 1902 (295).

"Report of Special Committee on Organization.

Indianapolis, Ind., Jan. 28, 1902.

Officers and Members of the Thirteenth Annual Convention, United Mine Workers of America:

Gentlemen:—We, your Special Committee, appointed to formulate a policy which would culminate in a complete organization of all the competitive fields, are fully convinced that the two Virginias have been a menace to the perfection of our organization.

Therefore we recommend that the National Executive Board pursue the most aggressive policy that they, in conjunction with the several District Presidents, can pursue to bring about organization in the different Districts, not only in Virginia but in all other Districts. * * *

We further recommend that in case of a strike in any District of the employees of any company who operates mines in competitive or other Districts that

the National Executive Board be empowered to order a suspension of work in said mines in support of a strike in said District, if, in their judgment, it is deemed advisable."

In the National Convention of 1904 the following resolution was offered by Local Union No. 31 from District No. 21 and was adopted by the Convention (299):—

"Resolved, That in strict compliance with our obligations and teaching we accord a hearty approval to our National Board on its action in regard to District No. 15, strike, now on, in Colorado, and whatever action taken by the National that in their judgment is necessary to the successful ending in the elevating of the craft in District No. 15 meets our entire approval, for which we pledge our unqualified support, as our knowledge of the field of Southern Colorado in the event of an unsuccessful issue of the trouble now pending would work almost unsurmountable and incalculable damage to District No. 21, as it would be an unjust competitor in the same commercial field and could with very little effort undersell and supersede us in the Oklahoma and southwestern Kansas markets. * * * and be it further

Resolved, That the National recommend to the several districts to take definite action and place the same restriction on miners of coal in strip pits, bank robbers, or coal mined in any manner that is placed in competition with coal mined by United Mine Workers."

In the National Convention of 1907, defendant Green (now National Secretary-Treasurer) said (303):—

"Now, something must be done. It is absolutely necessary to protect us against the competition that comes from the unorganized fields east of us. I believe a National movement would have induced West Virginia to become organized, and that, like other districts in 1897, it would have meant the organizing of that field. That would have brought

us the protection we so richly deserve, and that is so absolutely necessary for us to have."

In the same Convention Delegate O'Connor said:—

"Through our effort last year we have the non-union coal practically shut out of Indiana" (304).

In the National Convention of 1908, Mr. Feehan, President of one of the Pennsylvania Districts, said (304):—

"I am very desirous of lending all of my efforts to prevent, if possible, the production of non-union coal."

The following extract is from President Mitchell's address in 1908 (305):—

"The strength of your Union is not in the best organized districts. Unfortunately, and I say it regretfully, its strength is its least strongly organized fields. You cannot be permanently safe, you cannot rest in security until West Virginia, the Irwin Field, the Connellsville and the Meyersdale regions of Pennsylvania are organized. You men of the Mountains of the West are not secure until south Colorado is organized. It may cost money, it may cost sacrifice, but, gentlemen, sleep not until those men and those districts are enrolled in your Union. (Applause.)"

In the National Convention of 1909 Delegate Haggerty, speaking of the necessity of securing closed shop agreements in Meyersdale and West Virginia, said (306):—

"Central Pennsylvania last year passed a resolution asking that International organizers be appointed and placed in the adjoining fields that are in direct competition with us and are threatening our homes and moving in the direction of the organized fields. * * * There are, Mr. Chairman, in the neighborhood of fifty thousand miners in District 17 that are on the outside of this movement east of the Ohio river. The great bulk of the coal mined by those

mines comes in direct competition with the fields of Central Pennsylvania. This resolution is an important one. * * * Those fields are in direct competition with us. The money of this organization should be spent in the non-union districts in order to protect the districts where an organization has been established and wage contracts made."

In the Convention of 1910, National Vice-President McCullough said (315):—

"The first, principal and great need of our Union is the organization of the non-union workers of this country. So long as the great army of non-union men remain outside of the organization, they continue to be a menace and stand in the way of progress and advancement of the organized mine workers."

The Journal of September 26, 1912, contained the following by Adolph Germer, an International organizer and officer (324):—

"West Virginia has always been the barrier to our progress, a dagger in the heart of the United Mine Workers of America, by its unorganized condition. In every Interstate Joint Conference between the miner and the mine owners, the latter have raised West Virginia as their battle cry against our demands. The vast amount of non-union coal that is mined for practically nothing in that State has made inroads in the markets that rightfully belong to the central field to such an extent that we have reached the limit of our progress in the way of higher wages and better conditions. The east must be brought up! And if there ever was a time to withdraw that dagger from our hearts and forever wipe out that cry of cheap coal from West Virginia, that time is now."

In an official statement in the Journal of February 20, 1913, National Vice-President Hayes (a defendant herein) said (326):—

"We will spend every cent in our International treasury, collect a million dollars or more by assess-

ment and tie up every non-union mine in the country, if need be, in order to redress the wrongs of the West Virginia miners, and in saying this I express not only my own views, but the views of President White and the entire International Executive Board."

In his report to the 1914 Convention, the same officer said (327):—

"The organization of the non-union fields is one of our chief tasks and the culmination of the campaign we have started must and will result in the complete organization of the coal mining industry of the land. We must never rest content until this goal is achieved. Our chief hope of future preferment, better wages and better conditions depends upon our success in the organization of these fields.

With the indorsement of this Convention and with your expressed determination to support and sustain the action of your International Officers in this work, we propose to carry on this campaign with renewed hope and vigor, and will never cease our activities until the last remnant of non-unionism in the mining fields is forever removed."

In his speech to the special convention of District 21 on May 18, 1914, National President White said:—

"Now, a great many of you men realize how much the organization of Colorado is to the progress of the Southwest. The great energies of this movement have been spent in recent years, in my mind, in the strong organized districts." (986.)

* * * * * * *

"We cannot surrender the strike in Colorado. You men in the Southwest will appreciate more than any other class of men the establishment of the union in Colorado, and New Mexico, for with the fall of Colorado, New Mexico must fall in line." (989.)

* * * * * * *

"We have just halted the campaign in West Virginia to give our attention to Colorado. We felt

established practice of this organization in carrying out the General Policy was as follows:—

(1) That by 1914 the General Policy had become the basic policy of the organization and was understood and regarded, both by the officers and by the rank and file, as essential not only to the growth, but to the very existence of the Organization.

(2) That in carrying out this General Policy the Union leaders regarded the miners as quasi-partners with the Union operators, engaged in the common object of protecting their joint relations and progress against their mutual foe, the open shop mine, and its dreaded weapon, cheaper mined coal in the Union markets.

(3) That it was pursuant to this General Policy that the organization of the non-union fields was undertaken. While the extension of the supposed benefits of the Union to the non-union miners was always publicly proclaimed as the main object, the real purpose as shown by the unguarded utterances of the conspirators to one another, was to protect the men already in the Union.

(4) That the Union universally considered the essential feature of the carrying out of this General Policy to be the prevention, by all necessary means, of open shop coal reaching the Union markets at a price below that at which the Union operators could afford to sell.

(5) That this result was to be accomplished, where possible, by peaceable unionization of the non-union mines, the primary purpose of this being, however, by imposing on them the Union conditions and restrictions, to raise their operating cost to equal that of the Union operators.

(6) That where an open shop employer refused to accept the closed shop, the next approved step was

secretly to organize as many of his men as possible and when a sufficient number were signed up, to call a strike at his mine.

(7) If the operator proposed to continue the operation of his mine with his faithful employees and tried to secure non-union men to supplement his working force, then it was the recognized policy of the Union to use all necessary means to prevent this. The operator was first approached, persuaded, threatened and intimidated. The men were first persuaded, then threatened; if this were not successful, they were intimidated and assaulted; if the employer employed guards to protect his employees and their property, a regularly organized propaganda was put in effect to discredit them and to prepare the way for casting on them the blame for what the Union next proposed to do. If an injunction were procured, the Courts were denounced. If the Governor called out the Militia the propaganda was turned on them,—all to prepare the scene for the next step.

(8) Finally, when all the above methods failed and when the propaganda had got the public in a properly sympathetic frame of mind, a concerted attack was made, the employees driven off and the property destroyed.

II. The Adoption and Application of such General Policy in District 21 and the Recognition of its Importance by Stewart and his Accomplices.

(1) *Extracts from Debates in the Southwestern Joint Conventions of Miners and Operators Relative to the Application of this General Policy to Districts 21, 25 and 14, Comprising the Southwestern Field.*

None of the following extracts were in the prior record.

The Southwestern Operators Association comprised the Union operators in Districts Nos. 21, 25 and 14, covering the States of Arkansas, Oklahoma, Texas, Missouri and Kansas.[6]

After the adoption of the closed shop in the Southwest in 1903, Joint Conferences were held of the operators and miners prior to the expiration of each agreement for the purpose of negotiating a renewal.

The meetings lasted from two to six months, with adjournments of a week or two weeks at a time.[7] Stewart, Mullen, Holt, Dalrymple, McLachlin, and King (the officers of District 21 during the Prairie Creek affair) were very regular attendants at these meetings.[8] The consummation of the Southwest agreements always awaited the agreement in the Central Competitive Field.[9]

The miners were represented at these meetings by the District Officials, Board Members of the International Board, "and at times International Officers" and by delegates elected by the local Unions in the three Districts.[10]

---

[6]Originally Colorado and New Mexico were included as part of District 21; Hanraty 491.
[7]Sholz, 1778.
[8]*Id.* 1778-9.
[9]*Id.* 1778.
[10]*Id.* 1780.

At these meetings "the principal objection we (the operators) usually put up (against the demands of the miners for the increase of their wages and the other demands they made) was the competition which our coals were subjected to against other coals mined in adjoining fields, particularly the non-union fields of Colorado, New Mexico, Alabama and Kentucky, the lignite fields of Texas. * * * We prepared statements showing the cost of our coal against the coals mined in non-union fields which were driving our markets closer to the mines and curtailing our production, thereby not only depriving our men of working, but increasing the cost of the output by the smaller tonnage produced. On the other hand, the increased production which our competitors obtained served to lower their cost, enabled them to bring their product very close to the doors of our mines."[11]

The protest by the Southwestern operators against the competition of the surrounding non-union mines, and their threat to break with the Union unless the latter raise the cost of such mines by imposing the Union conditions on them, began immediately after the first closed contract was signed, as shown by the following extracts from the proceedings of 1903[12]:—

OPERATOR DARNELL:—"We feel that the present scale of selling prices are as high as we can afford to make them in view of the competition from Alabama and surrounding States and also in view of the discovery of oil in the South."

OPERATOR SCHOLZ:—"When you speak of what we shall get for our coal Mr. Richardson says we can put a price on our coal and sell it. I shall ask you men what are the conditions that prevail in the Territory where we sell our coal in competition with the coal from other fields. I have asked this question of one

[11] *Id.* 1780, 1781.
[12] Pp. 1556.

of your men and he said he didn't know. We sell our coal and the Choctaw in competition particularly with the coal coming from Birmingham and from Colorado. I can buy Birmingham coal at our mines today for $1.10, and our coal to produce it costs $1.60 a ton."

In the Convention of 1904 the operators stated that they could not pay the Union scale without closing their mines and the Union men accordingly promised "that the Districts of Colorado and New Mexico would be organized," that "the States that we protested against bringing coal into our territory would be organized and put on a basis equal to that demanded of us."[13]

The following are significant extracts from the proceedings of the 1904 Joint Southwest Convention, showing the extent to which both the operators and miners considered that their welfare was menaced by the open shop coal, and the realization by the District officials of the competitive relations of the different mines:—

"OPERATOR PETER MCCALL, KANSAS, * * * He said the reason the reduction was asked in the east was on account of competition with non-union coal. Does he not know that today the coal from Colorado, in spite of his efforts, is coming into Kansas and the Territory? Does he not know that non-union coal from Alabama is coming up into Arkansas and the Territory from Memphis and taking their trade" (1524).

* * * * * * *

OPERATOR PERRY:—"Whatever may be the competition between the coal mined in this territory, it is nevertheless true that, so far as Arkansas and Indian Territory are concerned, they do come into direct competition with Alabama coal, principally at Shreveport and points reached from that town by railroads that diverge from it" (1524).

* * * * * * *

NATIONAL VICE-PRESIDENT LEWIS:—"There is a natural market for every mining district, a market

[13]Sholz, 1794.

that belongs to that district; and whenever another district is attempting to invade it they are doing something they ought not to do, and something they should not be permitted to do" (1525).

* * * * * * *

MINER BRITTON:—"Competition in the old time was the life of trade; but we have got it right in the neck and we know it, **for competition when brought right down to bed rock ruins trade.** * * * The sooner we, as representatives of the operators and miners, realize what we are up against the better for us. The day is past when one man can cut-throat another. The sooner the operators realize that fact the better for the miners. It is all right enough for the operators to stand up and tell us they haven't got it in their hands; but I want to tell you I know different" (1526).

* * * * * * *

MINER HOYE:—"Of course there is a strike on in Colorado. I shall say further that that strike is going to continue to be on. It will be supported and well supported, and that battle is to be fought to a finish. If you imagine the operators out there can successfully operate their mines and compete with you in the face of that great labor trouble, I think you are mistaken. It is ridiculous to think they can. I think their competition will not trouble you much in the future. I think they will be pretty well occupied fighting the labor troubles they have now, and that they will have for some time. It will be a hard matter for them to get efficient labor, and without efficient labor they cannot compete in the markets" (1526).

MINER BRITTON:—**"Competition ruins trade, and you can't get away from that"** (1527).

OPERATOR PERRY:—"Take the question of competition in District 21, and that coal, so far as all the mines along the Choctaw, Oklahoma and Gulf Railroad are concerned, and so far as all the mines on the

other roads are concerned, come into direct competition at Memphis with Alabama coal. It comes in direct competition with Alabama coal at Shreveport and all the other markets in Western Louisiana and Eastern Texas. More than half the coal mined in District 21 goes south into Texas and Louisiana markets—at least that is the fact so far as our mines are concerned" (1527).

NATIONAL VICE-PRESIDENT LEWIS:—"I have listened with a great deal of interest to Mr. Perry, and other representatives of the operators, and I recognize a great deal of logic in the statements that he has made from time to time on behalf of the operators in our conference. I agree with him that competition has been, is now and always must be considered a factor in arriving at final conclusions in joint conventions between operators and mine workers. Competition has its bearing on our present deliberations. * * * I know that they have lost contracts aggregating thousands of tons. It is true at times these contracts are lost because of the fact that the man who is buying coal can buy it to better advantage from one producer than he can from another. This is where the factor of competition comes in. I might say to our people on this side of the house that if you could go down street and buy a bushel of potatoes in one store for a dollar, you would not be apt to go across the street and pay $1.25 a bushel for potatoes of a like quality" (1527).

The Operators Statement of 1910.

The most significant item, however, in the Southwestern Joint Convention Proceedings, was a long statement prepared by the Operators and read to the Joint Convention of February 1910. This statement was afterward printed, handed to the Union officers and distributed among the Union delegates, and among the miners throughout the Southwest, and also furnished to the press for publication. It is found on pages 1782

to 1791 of the present Record[14] and will bear careful reading and study.

This statement was prepared by a committee of three operators appointed by the Operators' Association for that purpose, and presented by Mr. Scholtz to the meeting as a statement of the position of the operators.

After reading it, Mr. Scholtz explained to the meeting a map made in several colors and which graphically illustrated the progressive inroads of the surrounding open shop coal on the markets previously enjoyed by the operators in District 21, and the ever narrowing circle of markets still available, protected only by the freight rates from the open shop territory.

The following is submitted as a fair abstract of the significant parts of the statement:

The miners having demanded a 10 cent per ton wage advance, and an equivalent advance for day men, machine men, etc., also shorter hours and other concessions, the statement begins by the assertion that an advance in wages is impossible because competitive conditions preclude the operators from recouping it in the price of the coal.

After a discussion of the recently developed competition from oil and natural gas,[15] the statement takes up the competition from the surrounding non-union fields, as follows (1786-7):—

"Coal produced in New Mexico and Colorado, non-union mines, has come as far east as Oklahoma City, within a short distance of our mines, displacing thereby the product of Oklahoma mines.

In 1906, a definite promise was made to the operators of the Southwest that the Colorado Field would be organized. This has not been done, and the

[14]Neither it nor any other extract from these Southwest proceedings was found in the previous Record.

[15]By 1914 oil and gas had become a much less serious competitive factor. See Stewart's Report for 1914, pp. 1537-8; also Bache, p. 1497; Puterbaugh, 1433.

Colorado and New Mexico coal has further encroached on our territory since that time. The coal from these two fields is displacing coal produced in District 21 in Fort Worth and the territory west thereof. A vast amount of lignite coal is being mined in Texas by non-union labor, and this coal is being sold to such points as Cleburne and other Central Texas points at a lower delivered price than the freight rate from Arkansas and Oklahoma, which has resulted in the waste of a great amount of slack coal, which has been unable to find a market. This is a matter of personal knowledge to every coal miner working in the Arkansas field." * * *

"Non-union Alabama coal has displaced the production of coal in District 21, coal from that field being sold at Shreveport and all Northern Louisiana points, and taking all business east of Lake Charles, Louisiana. At the Gulf Coast points, such as Galveston and nearby interior points, we find that a vast amount of Arkansas and Oklahoma production is being displaced by coal mined in the West Virginia non-union fields, shipped by water."

The statement then gives the figures as to the relative production in Arkansas, Oklahoma and the other states concerned from 1903 to 1908, showing a large decrease in Arkansas and in Oklahoma, while in the same period the production in the open shop fields of Colorado, New Mexico, Alabama, Kentucky, Texas and West Virginia showed a large increase.

During the five years prior to 1903 the Southwest Operators working open shop increased faster than their surrounding competitors. From 1903 to 1908 they decreased 8.4 per cent. while the surrounding open shop mines increased 39 per cent.

"This is due entirely to the fact that the scale in 1903 was made without due consideration to competitive conditions in other fields, and the percentage of increased cost has been so great that it has put the operators in a position where they cannot take business, and the result has been loss of work and less tons produced" (1790).

Illustrations follow of the curtailment of the markets.

"In the non-union period prior to 1903, we shipped a large tonnage to Houston, Galveston and Port Arthur for export and steamer use, and the entire state of Texas drew its entire supply of fuel, with the exception of one mine in Texas, from Oklahoma and Arkansas. Today, under union conditions, we are excluded from the south half of Texas, which is supplied entirely by coal from the non-union fields of Alabama and West Virginia, while the Western part of Texas, which we also have lost, is supplied almost exclusively by coal from non-union mines in New Mexico and Colorado."

"Between 1898 and 1903, under non-union conditions, the entire state of Oklahoma, then Indian Territory, was supplied by mines located in Indian Territory. Today, under the union, the western half of Oklahoma even as far east as Oklahoma City, is now very extensively supplied with non-union coal from Colorado.

Before we agreed with the Union, the entire State of Louisiana, except that portion east of the Mississippi River, was supplied with coal from Arkansas. Now, that territory is supplied with coal from Southern Illinois and from the non-union mines of Alabama" (1790).

The Conference at which this statement was presented adjourned without result to April 12th and finally broke up without any agreement being reached.[17] (1434.) At a later meeting, the operators read another

[17]It was following the conference at which this statement was presented that the operators agreed among themselves to go open shop. None did so, however, except Mr. Bache, who disgusted with the others for failing to keep their promise, learning that some of them had reopened negotiations with the Union contrary to their agreement, and being offered by Stewart a separate contract, removing the discriminatory conditions which, under the Association contract, his competitors had enjoyed over him, resigned from the Operators' Association and signed the separate contract (1435, 1459-60). On this action by Mr. Bache, the other operators, fearing he would take their markets and their men if they remained idle, were forced to sign up with the Union (1798, 1437). (See *infra*, pp. 114a-116a.)

statement, certain passages from which are significant in connection with the present question.

"Mr. Keith (reading):—'We offered to adopt last year's contract (which we hereby renew) with a machine scale for all districts for loading of 66-2/3 per cent. of the tonnage scale. We have shown you conclusively (at least we assume it was shown conclusively, as you have made no reply) that by reason of the competition of non-union coal from Alabama, Colorado, New Mexico and Kentucky, and lignite from Texas, in addition to oil and gas, and cheaply produced union coal from Illinois, we are unable to pay you any advance. This competition makes it impossible to find a market for our coal at the advanced price which your demands would necessarily require with the certain result that we would be compelled to shut down our mines permanently, and you would find it necessary to move away from this section of the country to fields which are not suffocated by unbearable conditions, in order to earn a living for yourselves and families. * * *

Many arbitrary conditions and expenses have been imposed on us in violation of the contracts, which were of no material benefit to your members, but which have largely caused the great increase in the cost of our coal, and made us lose more than half of our natural and legitimate markets to non-union produced fields" (1535-1536).

(2) *Statements by Union Officers and Delegates in Conventions of District 21 Relative to the Importance to that District of Maintaining the General Policy.*

None of the extracts offered from the following Convention proceedings of District 21 were in the prior Record.

They are taken from the Biennial District Conventions of 1910, 1912 and 1914. The following are regarded as the most significant:—

The District 21 Convention of 1910.

"Delegate Conners:—The next resolution is from Bridgeport, Texas, and is as follows: 'Bridgeport,

Texas, November 7, 1910.—To the Annual Convention, District 21, U. M. W. of A., McAlester, Okla., Greeting: Whereas, the rapid development of the bituminous and lignite industries in the state of Texas is phenomenal in the history of the state; and whereas the unorganized condition of the mine workers in parts of the bituminous and all of the lignite fields is becoming more and more a menace to our Organization, not only to Texas; therefore, be it resolved, that we request and urge upon you the importance of organizing the lignite and unorganized part of the bituminous fields of Texas, and specially the Jack and Young county fields of Texas. Submitted by Local Unions Nos. 787 and 2466,' and passed by the Convention" (329-330).

The District 21 Convention of 1912.

The 1912 Convention was attended by National Secretary-Treasurer Green and by National Vice-President Hayes, both of whom made speeches, extracts from which are as follows:—

Mr. Green said:—"I have frequently said, and will repeat it here now, and I would not hesitate to undertake the job and guarantee it would be carried to a successful culmination, that in this year 1912, instead of having one-third of the members in our organization, we had every man in it that mines coal from the Gulf to the Lakes and from the Atlantic to the Pacific,[16] that I would guarantee to deliver to the mine workers of this country an increase of wages not less than 25% and a reduction in the hours of

[16]The United Mine Workers is not a mere Craft Union, basing its membership on the kind of work its members do. It is rather an Industry or Product Union since it includes not only the miners proper but all those who work "in and around coal mines," whether miners, carpenters, switchmen or blacksmiths. As stated by this Court (259 U. S. 383):—

"Under its Constitution, it is intended to be the union of *all* workmen employed in and around coal mines, coal washers and coke ovens on the American Continent."

The aim is to dominate the production and distribution of coal by controlling all the men who participate in its production.

labor to six, and other improved conditions of employment" (331).

"These thousands of men mine coal under these circumstances, and these are some of the non-union conditions to which I will not take time to refer, but I want to point out that these men are sending into the market their coal in competition with the miners of Ohio, Illinois, Western Pennsylvania, Indiana, and in many instances, because of mining coal under these non-union conditions, at such a cheap rate, they are taking the market away from our people, and we are feeling in the East very keenly the competition coming from these non-union fields, and we have to organize them if it does take men and money. The standard of the United Mine Workers of America must be established not only in West Virginia, but in every other non-union camp in order that protection might be given to the men who mine coal. (Applause.)

And, I know, my friends, that you have had some similar experience. You have the unorganized mines of Southern Colorado; the coal that is mined by the unorganized mines in Alabama, and the other non-union sections surrounding the Southwest territory, and the coal that they mine is going into competition with the coal that you mine, and you men have begun to feel very keenly the competition with these non-union fields, supplemented by the discovery of oil and gas in this territory. I have noticed from the coal reports in 1910 that the State of Oklahoma decreased its production; some of it, of course, was due to the strike that you had here, but not proportionately should the decrease in production be measured by the strike that took place in this field. A part of the decrease in production was due to the keen competition from the non-union field of southern Colorado, and from the non-union fields of the South. All of this emphasizes only this one thing; that we have a great missionary work to do; that we have to carry the banner of unionism into these fields, no matter whether they do have thugs and guards and men who will assault our men and in every way possible attempt to keep the men who carry the doctrine of

unionism there; regardless of this, the fact remains that our organization will be carried there; it must be carried there, and it will eventually be carried there and the banner of our organization established there just as firmly as in the other organized sections of this country. (Applause.)" (332-3.)

"**International Vice-President Hayes:** Mr. Chairman, and Fellow Mine Workers; I am indeed pleased to have the opportunity of meeting with the delegates in District 21's Convention. I came here today as the representative of President White who is unable to be with you on account of very important engagements he has elsewhere. * * * (333.)

What every member in our organization needs is a thorough knowledge of the trade agreement system of settling wage differences, is an understanding of conditions all over this country; **is an understanding of the non-union fields, and the competitive relations that enter into the protection of coal, and with that knowledge we can safely decide and thoroughly decide, with credit to our organization, with safety to our organization, upon a correct policy.** In that way we will protect the life of the organization. (Applause) (333).

* * * * * * *

I want to assure you that the International Union will give you its fullest co-operation and support in protecting the interests and rights of the membership of this field.

When we are called upon at any time we will hasten to your rescue, and do what we can to make the organization here in the Southwest second to none in our jurisdiction." (Applause) (334).

In this Convention there was considerable debate relative to the desired organization of the lignite fields of Texas for the protection of the Union operators of District 21, (334-336), which had been the subject of discussion at the 1910 Convention.

In this connection Delegate Sparling (who in 1914 was the District Board Member representing the Texas District[18]) said:—

> "So many promises have been made to the miners of Texas to organize the lignite field, and it has never been done. I know it is a hard proposition to organize them, and you people ought to realize that it is. **We have promised the operators of the organized field time and time again that we will do this work,** and every time we meet in contract convention, they tell us, you can better your own condition if you will go down there and do as you ought to do." (334.)

Delegate Johnson made a long statement (334-336), relative to the cost of mining the lignite coal in the open shop lignite mines in Texas, showing that it was sold at an average price of 96 cents against an average price for bituminous coal of $2.55 "where the organized men work." * * *

> "Now, it is easy to see that where this coal is produced and loaded on cars at an average price of 96 cents a ton, that is a hardship to produce coal at $2.55 and compete with it, and the statistics I got from the Bureau of Mineralogy, I believe, will determine it. Now, in the year 1910 there were 13,200 and some odd tons less bituminous coal produced than there was in the year of 1909. Again the production of lignite exceeded in the year 1910 the production in 1909 by 262,000 tons. Now, that is the difference in the production. In the year 1911, the mines that I am working in worked 149 days, and that applied also to the mines of Lyra. The mines were working there practically steady. The coal as Brother Sparling stated, this lignite coal is shipped right through our town **every day that I am not working in the mines, when I am home I can set and see lignite coal go past us,** and it is produced some 200 miles away from us, and

[18]See also as to this lignite competition *supra*, p. 27a. Also *infra*, p. 35a, also 41a in connection with the testimony of Hanraty.

in some instances it goes some 200 miles west of us, and we cannot reach that market. (335.)

* * * * * * *

"As has been stated by the other delegates, and I believe our District President is familiar with this also, that every time that we meet our operators in conference at Fort Worth, Texas, to make an agreement, we are confronted with this proposition, 'Why don't you organize the lignite miners? And unless you organize these men it is impossible for us to grant any further demands, and we cannot advance your wages any further unless you do it.' **We have promised time and again that we would make some effort to organize those miners,** and the only efforts that have been made is an investigation" (336).

"PRESIDENT STEWART:—In regard to the lignite field in Texas there is no doubt of the competition of the lignite fields in Texas with the Texas mines, and the mines along the Rio Grande river in my opinion." (336.)

The District Convention of February 17, 1914.

At the 1914 District 21 Convention, which met six weeks before the Riot of April 6, McNamara, McLachlan, Stewart, Howard and Hanraty were among the listed delegates. (1537.)

The proceedings are filled with indications that the Officers and members were thoroughly familiar with and fully appreciated the significance of the competitive factors governing the marketing of coal, including the effect of the open shop mines, both without the District and within it. (See extracts, p. 1537, *et seq.*)

President Stewart's Report notes encouraging signs for the prosperity of the Mine Workers, in that a number of large corporations are securing options on coal lands due to the prospective opening of the Canal which will connect with "a direct railroad line from Arkansas and Oklahoma, which it is claimed will give the coal fields in District 21 a decided advantage over

other competitive fields, and that an especially excessive coal business will be had in this field supplying fuel for steamships. And in addition quite a foreign trade is being looked for." (1537.)

This Report also states that one of the serious handicaps for years has been the cheap fuel oil, but that the price of fuel oil has now advanced to such a figure that this fuel can no longer be used in competition with coal, that the railroads are dispensing with oil burners and the industrial plants have been unable to meet the increased price of fuel oil. (See also 1433, 1497.) Stewart refers to the non-union mines in Colorado and Alabama taking their contracts when the Union miners are suspended pending the formation of a contract. (1537-8.)

He also says:—

"There is also a new field to the north of Henryetta on the Frisco Railroad to which I want to direct your attention, which is known as the Tulsa and Catalea fields. Located in this field is a very extensive area of coal land. We have had local unions there from time to time but nothing of a permanent structure. The mines have generally closed down in the summer, but there is being developed permanent mines in that field at this time, and an organizer has been sent into the field to organize and establish an organization that will be permanent, in order to try if possible to have this field, both operators and miners, represented in our next joint convention, as this field is going to be a great competitor of both the Henryetta and Kansas coal fields, and I believe that we will be forced to call a strike to bring into line certain operators in this section, and in the event that we do, that we fight such a conflict to the bitter end; that we never give up until we have established an organization of permanency and satisfactory contract regardless of the cost (1538-9). * * *

Prior to the calling of the Colorado strike I was requested by Vice-President Hayes of the national

organization to render the national body all possible aid in organizing the unorganized coal miners of that state, preparatory for the conflict that was to come.

Realizing the bearing that the result of this strike would have upon the future progress of District 21, I appointed with the consent of the Executive Board, and sent into the field four organizers for a few months. (1540.) * * *

The assessment levied by the national organization to support the strikers met with great favor with the rank and file of District No. 21, there being only twelve votes cast in opposition. In addition to the assessment many donations have been made by local unions throughout the district." (1540.)

Treasurer Holt's Report specifies a donation of $10,000 to the West Virginia strike and "Organizers, Colorado—$3577.10." (1541.)

Holt's report also contains the following:—

"After clearing the wreckage from the Oklahoma campaign and rejoicing in our victory, we learned that a great conflict had begun in our sister state on the west, namely, Colorado. **The strike is one which we have been almost praying for for the past ten years, on account of the great inroads the cheap non-union coal has been making upon our markets for some time.**

About the time this conflict was brought on we were appealed to by the national officers to give them what assistance we could in making that strike a success. Knowing, as we did, what a success or failure of that strike meant to our district, we immediately dispatched four men to that field to assist in that work" (1541).

Holt also reports that at the request of President Stewart he went to Colorado and attended conventions there and speaks of the militant attitude of the strikers.

"This is a fight that is well worth while for this convention to give careful consideration, because we realize what an obstacle it has been in our way in

the past ten years, and as we do this we can but realize what it means to us if the strike is lost and the men are compelled to go back to the same miserable conditions under which they have worked these many years. We have the further promise by our present international officials that if this strike is won they then intend to give us the relief we have long looked for in the coal fields of Alabama, and we cannot conscientiously hope to gain many more great advantages in our own field until we have secured this relief, and for this reason we must not, as long as it remains within our power, see these men lose the fight they are now waging in Colorado" (1542).

The Convention contained a long debate (1543 *et seq.*) relative to the question of reducing the scale at McCurtain, Oklahoma, in order that the McCurtain operator might be put on a proper competitive basis with the other Union operators. Both the Joint Conference Debates and the Miners Convention Debates in the Southwest show that the miners wished to put all the union operators on a basis of competitive equality (1555) provided they could do this by raising the wage scale of the low cost operators and not by reducing the scale of the higher cost operators. The opposition to the McCurtain proposition was that it involved a reduction and for this reason it was not eventually agreed to. The testimony of Hanraty shows that in 1915 he reduced the McCurtain scale to a competitive basis but was put out of the presidency of the Union for this (531). All these Debates, however, show very intimate knowledge on the part of the Mine Workers officers and delegates of all the factors entering into the cost of production at the different mines and into the question as to how much they could afford to sell their coal for. They are instructive in connection with the question as to whether the Union men knew what would be the result of Bache getting started open shop.

"DELEGATE GOMER JONES:—I want to see conditions altered in that state so that our district executive board can go to the lignite fields in Texas and get them into line so that we can confront the operators and say we have the whole state of Texas organized. The Texas operator meets us every time we go against them to make a contract with the conditions that prevail on account of the competition of this lignite coal, and we will have to confront them again with the unorganized conditions there, and I still continue in the same position I was at first, that if ever we needed the entire backing of the whole district we need it at this time" (1548).

At this Convention President Stewart made the suggestion that a Committee of the miners be appointed consisting of one representative from each of the different mining districts and that this Committee get together data for subsequent use as to all the conditions which should properly enter into a competitive scale agreement so that in the conferences with the operators they would be in a position to refute any figures or arguments produced by the operators. This speech (1549-1553) shows an absolutely intimate knowledge of the conditions at each one of the mining fields in Arkansas and Oklahoma as applied to cost of production. It shows clearly that Stewart's knowledge of cost conditions at the different mines was at least equal to Hanraty's. Relative to the appointment of the Committee, he said:—

"If you will do that, in my opinion, you will put your contract on a more competitive basis" (1553).

(3) *Oral Testimony as to Declarations by "Stewart and his Accomplices," the Direct Participants in the Destruction of Plaintiffs' Property, Showing their Knowledge, Appreciation and Adoption of the General Policy as Applied to District 21.*

None of this testimony was in the previous Record.

The evidence herein summarized is confined to general statements by participants in the subsequent destruction of plaintiffs' mines as to their approval of the General Policy and its application to the Southwest, and does not include the declarations by such participants as to their specific fear of plaintiffs' competition, which are covered by the following subhead III of this analysis.

Ex-President Hanraty, of District 21.

Ex-President Hanraty, as President of District 21 from 1900-1907, State Mine Inspector 1907-1910[19] and National Organizer 1912-1914 came in constant touch with Stewart and the other District Leaders and heard their views freely expressed on numerous occasions.

Hanraty, who was not called at the previous trial, testified at the present trial that he knew and had constantly met and been closely associated with Stewart during the seven years (1900-1907) that Hanraty was President of District 21, having himself appointed and retained Stewart as a member of his District Executive Board (499-500). He had also seen him frequently subsequent to 1907 when Stewart succeeded him as President, Hanraty's duties as State Mine Inspector bringing him constantly in contact with the Union officials (500).

The entire testimony of this important witness will bear careful reading (pp. 490-534, 569-576).

The principal points brought out relative to the general knowledge by Stewart and the other District officers of the competitive conditions affecting the coal business, particularly the menace of open shop coal, are illustrated by the following passages:—

"Q. Now, Mr. Hanraty, after the union mines were organized and the closed shop brought into effect in District No. 21, that is, after 1903, while you were

[19]From 1910-1912 he was Mayor of McAlester, Okl. (492).

President of District No. 21, did you have occasion to consider what, if any, effect the surrounding non-union mines had on the relations of your union with the union operators? A. Yes, sir, I gave it considerable study.

Q. In what connection? A. Non-union coal from Colorado, New Mexico, Alabama and Tennessee was making inroads and taking the markets of the coal produced by the union miners in the Southwest.

Q. And how did that affect the relations, if at all, of the union with the union operators? A. Why they just simply took OUR markets because they produced cheaper coal than WE did.

Q. When you say "our markets" to whom do you refer? A. To the markets to which WE shipped coal, Oklahoma City, Dallas, Texas,——

Q. Who do you mean by "we"? A. The Union operators.[20]

Q. The operators with whom you had relations? A. Yes, sir.

Q. And what, if any, action did you take in connection with that? A. Well, I made a number of investigations about the non-union coal being produced and sold in what we termed our markets, and I complained to President Mitchell about it and insisted that they be organized in Colorado and Alabama.

Q. For what purpose? A. **For the purpose of raising the price[21] and creating conditions so they could not produce cheap coal and take our markets from us.**

[20]Attention is called to Hanraty's attitude, which is believed to be typical of that of the other Union leaders, as a *quasi-partner* with the Union operator in producing Union coal. (See also *supra*, pp. 6a, 7a, 16a of this Appendix.)

While the common notion is that a laboring man or a Union leader is interested only in wages and working conditions and has no thought of the marketing of the product produced, this is certainly not true of the United Mine Workers, either officials or rank and file.

The present testimony clearly shows how thoroughly they all appreciated the direct relation between their own prosperity and the ability of their employer to market his coal and recognize the necessity of eliminating this open shop coal which so seriously threatened their future relations.

[21]Note Hanraty's specific statement in the above passage, several times repeated in his later testimony, that the sole purpose of organ-

Q. Now, state whether or not any union operators brought this to your attention, complained to you about these conditions? A. They were constantly complaining they were losing their markets by non-union cheap coal.

Q. Throughout all of the period that you have stated? A. Yes, sir, throughout all that period (493-495).

* * * * * * *

Q. Did you ever discuss with Mr. Stewart the effect of the non-union mines on the relation of the union miners and union operators, in connection with competition and cost of production? A. At every Board meeting we had we generally discussed that proposition; I don't remember when we did not discuss it.

Q. That you regarded as a constant menace to you? A. Yes, sir, a constant menace, the non-union coal from Colorado and Alabama (501).

* * * * * * *

Q. Now did you come in contact with Mr. White when you were President of District 21, from 1900 to 1907? A. Yes, sir, he was president of District 13, in Iowa.

Q. And did you discuss with him then the effect of competition of non-union coal on District 21? A. Yes, sir, the presidents of Iowa and Missouri and Kansas and myself discussed it, and we were all affected by the same non-union coal.

Q. And what, if anything, was discussed by you gentlemen as to the effect of Colorado, and as to what action should be taken? A. We brought all the pressure we could on President Mitchell to have Colorado organized.

Q. For what purpose? A. **For the purpose of raising the price in Colorado, so the coal could not come in competition with us"** (502).

---

izing Alabama and Colorado was to increase the price of coal shipped from those States into the markets of the Union operators in and near District 21. Could there be imagined a clearer violation of the Anti-Trust Act than a strike conducted for this purpose, particularly where conducted with flagrantly unlawful violence and destruction of property? See quotation from the Hitchman case in our brief proper.

Hanraty testified that Stewart had persistently demanded the organization of Colorado in order to protect District 21 and that during 1913-1914 Stewart had personally visited Colorado in order to investigate the situation with this in view (500).

"Q. Now, will you just describe briefly the effect which you have stated, of the Colorado, Alabama and other non-union coals that you have described, had on District 21, during the period from 1903 to 1914, as distinguished from the period before that, before District 21 was organized? A. The Colorado coal came as far east as Oklahoma City and Shawnee.

Q. When? A. In 1906 and 1907, and while I was chief mine inspector I had reasons to investigate it.

Q. How far did Colorado coal come before 1903? A. Before 1903?

Q. Yes, sir. A. We met them in competition, because we were cheap then ourselves.

Q. How much did the circle narrow as affecting the Colorado market, and the Arkansas market, as before 1903 and after? A. We used to ship coal as far west as El Paso and Ft. Worth, and Dallas, San Antonio, Galveston, and all over Texas, and the Arkansas coal competed with the Indian Territory coal during those days.

Q. And then after the organization of District 21, what effect did the Colorado coal have on those markets? A. It took practically all of the markets, took Ft. Worth and Dallas, Texas,—Colorado coal came in there, and Alabama coal came in there.

Q. Now, I was just going to go right around from Colorado. Now, coming down to New Mexico and Texas, describe the lignite mines,—New Mexico mines, describe the effect of those mines on District 21 mines, beginning as to what was the market of each before the organization 1903 and afterwards. A. They gradually encroached into our markets, until the circle became smaller every year. If you will look up the geological survey, the reports, you will find that this circle of Oklahoma coal and Arkansas coal has become less and less every year, and the non-

union coal from Colorado and Alabama has increased every year since 1900.

Q. And Alabama, what if any market did the Alabama coal take away from the Arkansas operators after the unionization of Arkansas? A. They took practically all of the southern Arkansas, Little Rock was filled up pretty much with Alabama coal, according to an investigation I made there. (502-3.)

* * * * * * *

Q. Now, Mr. Hanraty, did the duties of the district president, as carried out in practice, of the Miners' Union, require him to be familiar with these competitive conditions that you have mentioned, affecting the markets of the different operators in this district? A. If he did not investigate it, he would not do his duty right, I don't think.

Q. Was it his duty to be familiar with them? A. It was his duty to understand these competitive conditions, where coal was coming in competition with union labor.

Q. When you were President and Mr. Stewart was under you, did he investigate these conditions? A. Yes, sir.

Q. And afterwards, when you were mine inspector, did you know of your own knowledge that he investigated and familiarized himself with those conditions? A. Yes, sir.

Q. He had practically as good a chance to know those as you did? A. The same chance, the same opportunity." (504.)

* * * * * * *

Hanraty had also been in close acquaintance with Holt, Mullen, Dalrymple, Sparling, King and McLachlan,[22] and had frequently heard discussed by them and in their presence the inroads of open shop coal on

[22]These men, with Tasso (whom Hanraty did not know) constituted all the Officers and Board Members of District 21 in 1914.

As to the effect of the starting 5000 ton per day open shop mines within District 21 see the expert testimony of Mr. Finney, quoted *infra*, p. 89a.

the markets of the Union operators in District 21, and the menace thereby to the Union. (504-509.)

Without quoting at length all the testimony of this witness as to each of these officers, the following extracts give, it is believed, a correct impression of his testimony as to the knowledge and apprehension on the part of these very District Officers of the inevitable effect on the Union of permitting a large group of open shop mines to operate within District 21, without the protection of the long haul freight rates which handicapped the Colorado and Alabama operators in competing in Oklahoma, Texas, Kansas, Louisiana and the other territory within and adjacent to District 21.

"A. Yes, sir, he (Sparling) was very persistent in having the non-union miners in the lignite fields of Texas organized.

Q. In what connection was that? How did the lignite fields particularly affect him? A. The lignite fields came in competition with the bituminous fields of Texas, and he wanted the non-union mines organized that were producing this cheap lignite coal.

Q. For what purpose? A. **So that wages would be increased and conditions improved and the cost of producing coal at these particular mines would be raised so they could not compete as they were doing.**

Q. Compete with whom?

A. With the union operators of Texas. (506-507.)

* * * * * * *

Q. Mr. Hanraty, do you know of Mr. Stewart, or both of you informing what you call the rank and file of District 21, as to the existence of the conditions that you have described, and as to their effect on the miners' union in District 21?

A. **I don't remember a speech I ever made in my life when I was connected with the miners' union that I did not mention non-union coal taking our markets.**

Q. Did you frequently impress on the members of the rank and file the importance of this to the miners' union?

A. Yes, sir.

Q. On many occasions, or on few occasions?

A. On many occasions. *Whenever they became radical, and making demands that I thought was not justified, I would tell them on account of non-union coal that the operators could not afford to pay more than they were and to cut that out, it could not be done.* (509.)

* * * * * * *

On cross examination.

Q. Now, you answered on direct examination that your interest in the organization in the Texas field was that the miners wages might be increased and conditions enhanced. That is right, is it not?

A. Yes, sir.

Q. And that was the object, and the sole object of the miners, while you were associated with them, insofar as they attempted to organize non-union fields, and insofar as they felt concerned with the competition of non-union fields, it was in regard to their wages and working conditions?

A. Yes, sir. **It was to increase the cost to the operators** (527).

Local Witnesses.

A number of other witnesses testified to the knowledge and appreciation by the Union men of the menace to their organization of the coal shipped in from the open shop mines surrounding District 21 and told of frequent discussions of this in their presence, not only by Stewart and the other officers, but also by the rank and file.

The following are the principal items:—

O. A. Brooke (874).

A resident of Hartford, 1909-1920, in the banking business. Present at Riot of April 6th and a defendant herein.

The population of Hartford was approximately 2500, 98 per cent. of whom were coal miners or connected with them; all the miners belonged to the Union.

Both before and after July, 1914, he heard discussions among the Union miners of Hartford regarding the working time they had in their district and the working time in other districts.

"A. Well, the most discussed seems to have been the working time of Alabama and Kentucky over the Arkansas and Oklahoma fields.

Q. During this period I have described, July, 1914, and prior thereto, did you hear the union miners engaged in discussions regarding the non-union coals from these other states you have mentioned, if so, state the substance of such?" * * * "A. The chief objection seems to have been in preventing the work in the Hartford coal field."

HARRY OWENS (871).

Lived at Hartford 1908-1918. Population 1800-2000, including 1200-1400 miners "practically a solid Union town."

"Q. During July, 1914, or prior thereto, did you observe and hear discussions on the part of the union miners at Hartford regarding non-union coal from other States, if so, state the substance of such discussions? A. Well, the main talk was that coal was coming in from Kentucky and Alabama, I believe, and at a less price than the coal produced at Hartford.

Q. According to that talk was the coal from Kentucky and Alabama non-union coal? A. That was my understanding.

Q. The mines that you spoke of from which the coal business was being taken was of the Union mines in that locality? A. Yes, sir, all the mines were Union."

T. F. LINGO (1028).

Lived at Hartford, 1912-1915, in the insurance business. In Hartford were about 2000 men, mostly miners, all Union men.

During the spring and summer of 1914 heard the Union miners discuss the effect of non-union coal from Alabama and West Virginia.

"A. The only thing I heard them discuss was that they could ship—the two states could produce coal cheaper than the union miners could and they could sell it for less than what they could produce it.

Q. Who could produce it? A. West Virginia or Alabama.

Q. Who could produce it? A. The union miners.

Q. Where? A. Hartford or any other union camp." (1029.)

* * * * * * *

"Q. State whether or not the union miners discussed in your presence at Hartford, in the spring and summer of 1914, the matter of non-union coal from Alabama or West Virginia coming into markets formerly held by the union mines of Arkansas? A. I can answer in this way, I can say particularly that they said that the coal was being shipped into Arkansas but that it was being mined and produced and shipped to places that used their coal.

Q. That used whose coal? A. Union miners' coal.

Q. The union miners' coal mined where? A. Where they had unions." (1029-30.)

J. C. Peal (1026).

In the livery business in Midland in 1914.

"Q. Did you hear, about this time, and for a few months prior thereto, any discussion by union miners as to the effect of non-union coal from other States on the union mines of Arkansas? A. Yes, sir, I have heard that discussed.

Q. Go on, what was the discussion? A. Well, that by coal being mined by non-union miners in the State of Alabama, that came into competition with the Arkansas coal, that it affected the working conditions of the miners in the Arkansas coal field.

Q. It affected them how? A. The mines were not able to meet the competition, and there was less work."

Jake Ritchie (702).

Was a charter member of the U. M. W. A. at Huntington. At local meetings the open shop was discussed.

"They didn't want the open shops to work, and wanted people to join the Union."

"Q. They wanted open shops to join the Union? A. Yes, sir, they didn't want them to work.

Q. Did they say why they wanted them to join the Union? A. Well, to keep all such coal as that off the market so this Union coal could go on the market would be the *biggest* object.[23]

Q. That is, to keep the open shop coal off the market? A. Yes, sir."

Pete Stewart was present at one such meeting and engaged in this discussion of the effect of open shop coal on Union coal. (704.)

While the testimony abstracted under the above subhead brings us one step nearer to the direct application of the General Policy to the present conspiracy, it does not perhaps supply the final connecting link. While it clearly tends to show that Stewart and his accomplices had this General Policy always in mind, it does not demonstrate, as does the testimony abstracted under the following subhead III, that they had it primarily in mind *in this particular case.*

[23]Would not the jury be fully justified in concluding from the above statement that the *primary* object of the speakers was to keep non-union coal off the market for the protection of the Union operators—*"the biggest object"*—and that the increase in wages or betterment of working conditions of the open shop employees was the *secondary* or *ancillary* consideration.

III. Declarations by Stewart and his Accomplices at the Time Showing Directly that their Primary Purpose was to Prevent Plaintiffs' Coal Competing in Interstate Commerce with that of the Union Operators.

The testimony abstracted under the following subheadings, *none of which was in the former record,* is in no proper sense "cumulative," since it tends to establish directly a material fact as to which this Court expressly held the former record contained no competent proof whatever.

JAMES K. MCNAMARA (935-980).[24]

Secretary Local Union No. 1526 at Hartford (637, 1141) and check-weighman at Mine No. 4 of Central Coal & Coke Company (935).

Field leader of the Union Forces April 1-July 17, 1914.

The Conversations with Stewart and White.

"Q. Mr. McNamara, along about the beginning of May, did you go up to Ft. Smith to see Mr. Stewart? A. Yes, sir.

Q. Now, tell about that visit. A. I went to Ft. Smith, I don't just remember the date, but I went to the Hotel Southern and inquired for Stewart, and someone told me he was not there, he was sick at some house down this way (indicating), and directed over somewhere in this location, four or five blocks. I went to the house that they directed me to, and knocked on the door and a lady came to the door and I asked for Pete Stewart, and she said he was sick. I told her I must see him, and she went in, and then came back in a few minutes and said to come in, and I went in and Pete was setting on the side of the bed in his night clothes, and I shook hands with him, and he said 'How is things at Hartford?' And I said, 'All right.' And he said he had something to tell me, that he had been up to Kansas City and had a talk with White,

[24]The entire testimony of this witness is called to the attention of the Court, both as bearing on the question of interstate intent and on that of the liability of the National body.

and that they had **arranged a plan up there to prevent Bache from producing coal.**

Q. Did he say anything that you would see White later? A. Yes, sir, he said Mr. White told him that he would be over there pretty soon and wanted to see youse—that is the way he said it, Pete is Scotch, and that is the way he said it.

Q. Did you talk anything else about the meeting at that time? A. Yes, sir.

Q. How long were you there? A. About 30 minutes, approximately.

Q. What White was he talking about? A. John P. White, President of the National Organization.

Q. After that did White come to Ft. Smith? A. Yes, sir.

Q. Did you see him? A. I did.

Q. Tell how that happened and what was said. A. It was along during the Holt convention.

Q. Do you know when that was? A. I believe in May.

Q. The convention was the 18th to the 23rd of May. A. Anyway, I was in the convention hall, and it was about the second day of the convention. Jim Slankard came to me and said, 'John P. White wants to see us at the Hotel Main after the convention adjourns,' and I said, 'All right, we will stay together.' A little after 12.00 o'clock, when the convention adjourned, we went to the Main Hotel and stayed in the lobby, and in a few minutes White came along.

Q. Did you know him? A. No; he nodded his head for us to follow him to the elevator.

Q. Did he know Slankard? A. I suppose he did, he nodded to him, and we went up in the elevator, and in the parlor on the first floor, and he shook hands with us, and said, 'How is things at Hartford?' and I told him all right.

Q. Speak up, now. A. And he said, 'How is things at Prairie Creek? And I said, 'Things are a little watery in Prairie Creek No. 4 yet,' and he said, 'Yes, I have been informed on that'; and he said, 'Stewart told me that they can not get enough men to operate

the mine.' He said, **'If they do that, we must prevent that coal from getting into the market.'**

Q. Did he say why? A. Yes, sir.

Q. Tell it. A. He said because **if Bache coal, scab dug coal got into the market would only be a matter of time until every union operator in that country would have to close down his mine, or scab it, because the union operators could not meet Bache competition.**

Q. Did he say anything more after that? A. Yes, sir.

Q. What did he say? A. He said, 'When you go back to Hartford,' he said, 'I want you to tell the men what I have told you, but don't tell them I have told you.'(951).

Cross Examination.[25]

"Q. What was the next thing he (White) said? A. He said, 'How is things at Prairie Creek?'

Q. And you said what? A. I said, 'A little warm at Prairie Creek No. 4 mine.'

Q. What did he say? A. He said he had been informed of that.

Q. What was the next thing said in the conversation? A. He said, 'I have been talking to Stewart.'

Q. He told you he had been talking to Mr. Stewart? A. Yes, sir." (969.)

* * * * * * *

"Q. What did Mr. White say after you got in there, after the conversation that you have related? A. White said, 'I have been talking to Mr. Stewart about the Bache-Denman trouble.'

Q. Yes? A. Yes.

Q. Is that all? A. Yes.

Q. Is that the end of the conversation? A. No. You didn't ask me to repeat the rest of it. Shall I repeat the conversation?

Q. Yes. A. He said, 'I have been talking to Stewart about the Bache-Denman trouble.' He says, 'Stewart

[25]McNamara was asked no questions on cross-examination relative to his conversation with Stewart, nor did Stewart take the stand to deny it, although he was in Fort Smith throughout the trial (2230).

informs me that they can produce coal' something to that effect. He says,—let me get it straight because I don't want to ——

Q. How is that? I beg your pardon. What is that? A. **He said, 'If Bache-Denman is permitted to ship scab dug coal on the market'** he says, **'It is going to force the other operators to close their mines down or scab their mines because they can't meet the competition,' or words to that effect.**

Q. What did you say in answer to that? A. I didn't say a word.

Q. Did Mr. Slankard say anything in reply to that observation? A. No, sir, he didn't say a word.

Q. Then he told you he didn't want you to say anything to the boys down there because he was trying to keep the national organization out of it? A. No, sir. He said, 'I want you to go down there and tell them what I told you, but don't tell them that I told you.'

Q. Ah, you were to tell the men down there what he told you? A. Yes, sir.

Q. But you were not to tell them he had said it? A. No, sir.

Q. Who were you to quote as saying that? A. Nobody. I understood from Mr. White that I was to tell the men what he said, but I was not to tell them he told me to say it." (970-971.)

McNamara's Action Pursuant to White's Instructions.

"Q. After that did you go up and down the valley, as he said? A. I went back to Hartford and just quietly told the men what he said.

Q. You what? A. I quietly told the men what he said.

Q. How many of them did you tell, in a general way? A. I don't remember, I told practically everybody, I suppose.

Q. What did you tell them? A. I told them what White told me.

Q. Tell them the reasons, as he had given them to you? A. Yes, sir.

Q. And in pursuance of that, was that doctrine told all over the valley? A. Yes, sir." (952.)

* * * * * * *

"As soon as they (the Marshals) was withdrawn and he began hoisting coal, that is when we made the attack on him." (965.)

Cross Examination.

"Q. What was it you were not to tell the men and what did you tell them? A. **I told the men we wouldn't do anything until Bache begun producing coal.**

Q. Not to do anything until Mr. Bache began producing coal? A. Yes, sir.

Q. What were they to do then? A. **They were to stop them.**

Q. **He had told you that?** A. Yes, sir.

Q. **Not to do anything until they began producing coal, and then to stop them?** A. You understand, Mr. White didn't tell us to tell his conversation. **He told us to tell the men not to do anything until Bache began producing coal, and then it was time to act,** or words to that effect." (971.)

* * * * * * *

"You had no arrangement to get money from him [White], did you? From him.

Q. Yes? A. Yes * * *.

Q. What arrangements did you have to get money from him? A. Mr. White, when he rose up to go, said, 'Now you boys will not lose a day, and your expenses will be paid for every day you are in this trouble (972-3).

White's Ratification.

Two years later, after McNamara has finished the term at Leavenworth to which he was sentenced by Judge Elliott for his participation in this affair, he again met White in Hartford, and asked him when "I will get my money that I was promised for this work." White replied: "I will take it up with the Board as soon as I can" (962).

"We talked a little about the Prairie Creek trouble and he said, 'The *only mistake* that was made in that Prairie Creek trouble, if those two men had not been murdered you would not have had public sentiment against you, but on that it is against you a little bit there'" (963).

On cross examination:—

"Q. Did you have any arrangements to get money from him then? A. It was generally understood that the National Organization was going to pay us for the time we lost. It was generally understood we were going to be paid, and I thought the only man to go to would be White to get it, because he was the National President (973).

Q. You knew that the District was managing that fight? A. *I know they did* (they did) *not*" (974).

The Speech of Stewart at Hartford during his trip through the Hartford Valley on May 25th.

"Q. Now the period or date that you saw White here was in the week of May 18th—the convention was May 18th, and that would have been, you say, about the second day, about May 19th, and the convention closed the end of that week. Now, did you know what Pete Stewart did on the Monday following that convention, about going around the field? A. Yes, sir.

Q. Tell about that. A. He came to Hartford and made a speech.

Q. How did he get there? A. Came in a car.

Q. Who was with him? A. Paul Little.

Q. Who was Paul Little? A. He was the prosecuting attorney for this county. (953.) * * *

Q. Do you know where Pete Stewart went in that automobile? A. Yes, sir.

Q. Where did he go? A. To Prairie Creek and Midland and Huntington and Hartford.

Q. You saw him when he came to Hartford? A. Yes, sir.

Q. Did you hear him make a speech? A. Yes, sir.

Q. What did he say, as near as you can remember? A. I can't remember all the speech, but some phases of it.

Q. What was it? A. He said he would furnish guns and ammunition to all these men and their families in that valley, and if it was necessary he would sacrifice his own life **to prevent Bache getting coal out of there"** (954).

McNamara was not cross-examined as to this speech nor did Stewart take the stand to deny it. It is not the speech at Midland shown by the former record.

Additional Extracts from McNamara's Testimony.

The following additional passages from McNamara's testimony, while not relating directly to the question of intent, have so significant a bearing on the case that it is deemed advisable to quote them:—

Referring to the speeches made by the Union men and their sympathizers immediately before the Riot of April 6th:—

"Q. Now if the only purpose of the meeting was to go there quietly, and only use the kind of methods that were in the speeches, why did you bring such a big crowd of people with you? A. That was just a pretense, like many other things that occurred in this case, this trouble; it was all to preserve public opinion * * *.

Q. Did the influence of public opinion have anything to do with the way you handled this situation? A. Why, certainly. Of course public opinion—the Mine Workers' organization, I will say, in general, at large depends on public opinion in much of their troubles, and they try to preserve public opinion * * *.

Q. Were these speeches made—for what purpose were all these speeches made at that time? A. It was for public opinion, to keep public opinion on our side.

Q. In case what happened? A. In case there was any violence or trouble at the mine, public opinion

would say we went there for the purpose of getting these men to join the Union.

Q. Now was that a new thing, that kind of a way of handling the situation, was that a new thing in your experience with the United Mine Workers? A. No, sir, it was not a new thing. It was practically practiced all over the country * * *. I know it to be a fact that this is what is practiced practically everywhere where the Mine Workers have trouble with the Operators (942-944).

Q. Now, Mr. McNamara, in the language of the union miners, has the word 'thug' quite a different meaning than the ordinary meaning? A. Yes, sir, it has * * *.

Q. Has the word thug got anything to do with guarding property? A. Yes, sir.

Q. What does it mean in that connection? A. It means a man who would guard properly worked on a non-union policy or plan.

Q. Will a union man regard a man a thug who guards non-union property, no matter what his character is? If a man is guarding open shop property, whether he is a minister or school teacher or what he is, is he called a thug just the same? A. Yes, sir, he is considered a thug regardless of what his standing is. Q. And regardless of what his behavior is? A. Yes, sir * * *.

Q. Now, state what use is made of talk and publicity about armed guards and thugs in connection with a strike? A. We frequently read in the United Mine Workers Journal—Now, where there is armed guards on at a place, a thugs are employed, it is usual that the miners try to use such propaganda that will disqualify, in the eyes of the public, anything that the thugs are doing; they use that to camouflage the public (949-950).

Q. Now when you went out West [after the Battle of July 17] did Stewart tell you anything as to who was going to be the goat to take the blame for this stuff? A. Yes, sir.

Q. What did he tell you? A. He said, 'when you go West you stay there, and we will lay everything

on you during the trial and in court,' and he said, 'We will assume that the District and National had nothing to do with this, you will be the man that will assume it all.'

Q. Did he tell you he was going to lay the murder of those two fellows on you? A. No, sir, he did not.

Q. When you came back from the West, what did you find as to what had been done, as to who was responsible for those murders? A. I found that everybody in the country thought I had murdered those two men, and it was spread by the district organization all over the country that I murdered them. That is why——" (952).

DECLARATIONS OF UNION OFFICERS AND MEMBERS AT HARTFORD, MIDLAND, PRAIRIE CREEK AND HUNTINGDON BETWEEN APRIL 6 AND JULY 17, 1914.

Hartford was a town of about 2300 inhabitants situated two miles south of Prairie Creek.

Midland, 2000, was three miles north.

Huntingdon, 2000, was four to five miles east.

The population of all these towns consisted admittedly of Union miners and their families, and persons dependent on them for their livelihood.

Most of the men in these three towns were employees of the Central Coal & Coke Company, plaintiffs' principal competitor, which had mines at each of the three points.[26]

Hartford.

DR. H. P. ROUTH (840-849).

Lived and practiced medicine at Hartford 1909-1916; now at Tulsa, Oklahoma, where his deposition was taken.

"Q. Did you hear during the spring of 1914 any discussion in Hartford relative to the Bache-Denman Company's operation? A. Yes, that was the year that they tried to operate open shop and there was

[26]As to Hartford, McNamara, 934, *et seq.*; Midland, McGee, 765; Huntington, J. L. Finney, 837.

unlimited discussion about it. You could hear it on all sides and every day. It was a perpetual thing and everybody was discussing it. It was discussed by everybody because it affected everybody's business—mine as well as everyone's elses,—as to whether or not the mines operated. It brought on a crisis. It naturally affected everybody.

Q. Was there discussion that you heard as to what the miners believed and stated would be the effect if Bache-Denman got started open shop and was allowed and permitted to operate that way? A. Well, it would naturally, if Bache-Denman were going to operate open shop it would force the other mines to attempt it in order to compete with it was the consensus of opinion of the organized miners that they were going to try to produce cheaper coal than could be produced by Union miners; in other words, it was an attempt to change the scale; that is the way I understood it.

Q. Was there discussion by the miners as to what if any effect it would have on the relations between the Union and the other operators in that district, Number 21? A. Well their idea was, too; that is, it was the opinion that it would give Bache-Denman an advantage over the other mines if they had to adhere strictly to the Union contract and Bache-Denman were producing cheaper coal. The others would be working at a loss and the others would have to shut down if they could not operate open shop as Bache-Denman were, and if they were forced to operate under the existing contract they could not sell coal as cheap as Bache-Denman they would operate at a loss.

Q. Now, were the questions covered by your last two answers discussed in your presence by Union miners? A. Yes, I talked to and heard them—they were discussed everywhere and all the time. It was the burning question. Naturally as I stated before, it was a crisis in the community. People had their personal ideas about it. They had property there and everybody was interested. It was a very prominent question and discussed very prominently.

Q. Do you remember any particular time when you heard a discussion of that matter at the Davis Hotel?

* * * A. Yes, sir. I was at the Davis Hotel on a certain occasion when the District Board was down there relative ——

Q. District Board of what? A. District Number 21.

Q. Yes. A. The District Board was down there to settle some matters at Central No. 4. I was at that time boarding at the Davis Hotel.

Q. And did you hear any conversation in which the Board members, the members of the District Board,[27] District 21 participated, and heard same as to these matters, at that time? A. Yes, sir, they were discussing that matter at this time, and they were ——

Q. What matter? A. The matter of this non-union ——

Q. Bache-Denman operations? A. Yes, sir, it was during this time and it was just a general discussion in which there was possibly eight or ten taking part. They had had a meeting that day and they were just discussing the effect it would have on the price of coal in Arkansas and Alabama and other places as to whether they could meet the price or not.

Q. And do you remember anything else as to the substance of that discussion? A. Well, the only thing, I think I answered that before, was that if Bache-Denman were going to operate that way the others were going to operate that way if it could be done—the others were going to follow suit (841-844).

Q. Did you know Jim Slankard? A. Yes, sir.

Q. Nick Geiss? A. Yes, sir.

Q. Did you ever hear them discuss the matters to which you have referred to in your several answers, prior to July 17, 1914, relative to the several questions I have put to you? A. Yes, sir." (846.)

* * * * * * *

"Q. Did you ever hear any discussion by either of these men as to the effect of Bache-Denman getting started open shop on the other mines and the relations of the Union with them? A. Yes, they all said that if

[27]The members of the Board at this time included Stewart, Holt, McLachlan, Sparling, Dalrymple and Tasso. They were Stewart, Holt and his principal "accomplices."

Bache and Denman made a success of working open shop that the Central Coal & Coke Company would follow; that was the belief of the Union miners. You could get that from any source because it was just generally discussed that they believed that the Central Coal & Coke Company would follow suit right away because they worked more men than any one else there.

Q. Do I understand that you mean by your answer that Jim Slankard and Nick Geiss were two of the people that discussed this thing with you when you said they all did; did you include them? A. Yes, sir; I have talked to them specifically. I wanted to know. I asked questions. I have gone down into the mines to see what they were doing and was familiar with the operations and the men.

Q. And you discussed that same thing with many other miners than Geiss and Slankard? A. Yes, sir. I told you I think that was every miner's opinion. I think all of them were of that same opinion." (846-847.)

* * * * * * *

Cross Examination.

"Q. And you recalled the statements made by the District Board at the Davis Hotel back in 1917? A. Yes, sir; that was rather an accident, because——

Q. You have a recollection for a number of things they said * * * A. Yes, sir, because I remember this incident about having the house burnt down, and I know we had a time getting a place to stay because of this meeting being on there and I went over to the hotel and they were crowded and we had a great time getting a place to sleep" (848-849).

T. F. Lingo (1028-1036).

In the insurance business at Hartford 1912-1915; now at Tulsa, Oklahoma, where his deposition was taken.

"Q. State whether or not during the spring and summer of 1914 you heard the union miners at Hartford discuss what would be the effect on the union operators if the Bache-Denman mines got started and

run open shop? And if so, state the substance of that discussion. A. Well, if the Bache & Denman ran open shops, it would not be long before the other companies would want to run open shop and they were not going to let them run except closed.

Q. You mean that what you have just stated was the substance of what these men said in your presence? A. It has been so long ago now that I can't probably recall any one person, but it was the general talk all over town in the town of Hartford.

Q. What was? A. That they were not going to let Bache & Denman run open shop.

Q. Were any reasons given in this talk as to why they would not let the Bache & Denman run open shop with non-union labor? I mean the talk by the persons at the times and at the places we have been referring to in Hartford in 1914, by the union miners. A. It would have been on account of they could have produced it and sold it cheaper than the union operators, and on account they were in fear of these other companies would want to run open shop if they let them.

Q. When you say these other companies, what do you mean? A. Central Coal & Coke Co. is the one company of any size that amounts to anything.

Q. Were any of the other companies except the Bache-Denman mines using any non-union labor? A. No, sir.

Q. They were all employing union labor exclusively? A. Yes, sir." (1030-1031.)

O. A. Brooke (874-879).

Resident of Hartford 1909-1920, in the banking business, identified as present at the Riot of April 6th, and hence made a defendant herein.

"Q. During this same period that I have already discussed, did you observe and hear the miners engaged in discussions regarding the attempt being made by Bache-Denman Coal Company to work open shop, if so, give the substance of such discussions." (876.)

* * * * * * *

"A. It seems that they didn't have any objections to hoisting water.

Q. What were their objections as shown by their discussions? A. Didn't want them to mine the coal.

Q. Was anything said by the miners in their discussions during this period as to the effect on the Union if they were permitted to ship coal, as distinguished from merely hoisting water, if so, state substance? A. It seems that there was no objection as to the hoisting of water, but objected to mining coal (876).

ELMER BOHANNON (1049).

Operated a Union mine at Hartford in 1914. None of his men reported for work April 6th or July 17th.

"Q. Will you state what the Union miners working at your mine were discussing during the period between April 6th and July 17th, 1914, with reference to the situation at Prairie Creek No. 4?

MR. WARRUM:—The defendants renew their objection.

THE COURT:—It is merely cumulative, but he can answer.

Q. Do you understand the question? A. What they would be discussing between the two periods, the 6th and the 17th?

Q. Yes. A. Well I have heard them often say they would not allow scab coal to leave the Hartford field. (1052.)

T. A. HALL (864-867):—

Lived at Hartford 1909-1922, in the livery business, came in contact with and knew a great many of the people of the town. The 1914 census showed 2317 people, 90 per cent. of the men were Union miners.

"Q. Now in the town of Hartford at that time was there much discussion amongst the miners as to mining conditions and mining matters? A. Well, during

the time of that trouble there was quite a lot of discussion.

Q. Did you hear that matter discussed amongst the miners? A. Well, I—when they tried to operate these mines over there that was the general discussion of the people over there. Everybody was interested directly in the way the mines were operated

Q. And that was discussed? A. Yes, sir.

Q. Frequently or infrequently? You mean it was discussed all the——A. They didn't talk all the time—of course they slept and eat—but it was * * *

Q. It was the frequent discussion? A. Yes, sir, it affected everybody" (865-6).

* * * * * * *

* * * everybody knew that had any sense that if Bache-Denman ran open shop there it would eventually put the other people out of business because they would have to follow suit" (866).

Mr. Hall went on one of the bonds in connection with the indictments of the Union men in connection with this affair. Since 1914 he had been a member of the Union. (866-867.)

Midland.

WM. B. THAREL (1013-1016):—

Storekeeper at Midland in 1914—now living at Drumright, Oklahoma.

"Q. Did you ever hear the Union miners discussing the market reached by the Bache-Denman Company, where they sold their coal? A. Yes, sir, I heard them mention about that.

Q. Tell us what you heard discussed by Union miners at or before July, 1914.

THE COURT:—Let us hear what was said between these parties.

Q. Tell what they said. A. I heard the miners——

THE COURT:—Where was it? Who was it? When was it? A. That was at Midland, Arkansas.

Q. When? A. The year 1914, if I remember right.

Q. Who were talking? A. Abe Cunningham, Bill Price, Tom Watson, Maje Hulsey.[29]

Q. These were Union miners? A. Yes, sir.

MR. DRINKER:—Jess Griffin? A. Yes, sir.

Q. Any others? Tell what was said on that subject. A. **They was talking about the Bache-Denman Company would ship coal into the foreign markets, taking the place of Union coal.**

Q. Did they say where the Bache-Denman shipped? A. **They mentioned several markets.** They mentioned some place way off in Wyoming, I believe, **talked about how long it took the cars to get back.**

Q. **Did they mention any northern markets?** A. I believe they did.

Q. What? A. **I believe Minnesota.**

Q. Minnesota? A. Yes, sir.

THE COURT:—See if he can state what they said, if anything.

Q. What, if anything, did they say anything about Bache-Denman shipping to Minnesota? A. **Well, they said they couldn't never let that coal go down there, that it would affect the Union mines in Arkansas.**

Q. What Union mines? A. Well, in Arkansas, the Central Mines.

Q. Did you hear any discussion about Bache pumping water? A. Yes, sir.

Q. What did they say about that? A. They didn't seem to care how much water he pumped, **just so he didn't ship any coal** (1014-1016).

* * * * * * *

Q. Did you hear them discuss the houses, the Bache houses and what was being done with them, during that open shop time? A. Yes, sir.

Q. What did you hear them say about that? A. I heard them say that the Bache-Denman Company

[29]Price, Watson and both Hulseys are defendants in the present case; see caption p. 2.

Griffin is one of the participants named in answer to the order to make the complaint more definite and certain; see record, p. 25.

had taken some of the Union men and moved them from one camp to another, in order to make room for the non-union miners, something to that effect.

Q. Did you ever hear any body talking about the Bache-Denman employees, the union miners, being put out of their houses and not having any place to live? A. No, sir. (1016.)

* * * * * * *

Cross Examination (in full).

By Mr. Warrum:

Q. You heard these discussions among the miners, the local miners, as they gathered around the store? A. Yes, sir.

Q. But you never heard them say that Bache or his company had broken his contract that they had with the local, to work the union scale until July, 1914? A. I never heard anything about the contract being broke.

Q. They never complained of that at all? A. I don't remember it, no, sir.

Q. What? A. I don't remember hearing them say anything of that kind" (1016).

It will be noted that the principal Union operator whom it was the primary purpose of the conspirators to protect, was the Central Coal & Coke Company, many of whose mines were in Arkansas at Hartford and Huntingdon, adjacent to those of the plaintiff.

It is not, however, the location of the competitive Union mines, which for the present purpose is important. It is the location of the common markets to which such competing mines and those of plaintiff ship their coal.

The greater part of these markets, in fact all the "foreign markets" specified by Tharel, were in other States. Mr. Finney testified that 85 per cent. of the coal mined at Hartford, Huntingdon and Midland was marketed in "Texas, Oklahoma, Kansas, Nebraska and Kansas City, Missouri" (1021).

According to the declarations of the Union men to the other witnesses, the success of plaintiffs in running open shop would have first forced the Central Company to adopt this method, and the combined tonnage of both plaintiff and the Central Company would then have forced all the Union operators in District 21, including those in Oklahoma and Texas, to have followed suit, so that, as stated by the conspirators to the witness Finney[30] "all the operators in the District, eventually" would be forced to follow suit.

District 21 was in itself an interstate District, comprising the States of Arkansas, Oklahoma and Texas.

With all District 21 open shop, the combined competition would necessarily have forced the operators of Kansas and Missouri to the same course. How much farther the effect would have spread the Court can judge.

This is why the Prairie Creek affair was no mere local affair.

This is why it involved not merely District 21 but the other Districts and the National Organization.

This is why National President White, whose knowledge and experience told him precisely what was sure to follow, so promptly thrust his National hand into the break in the dike and effectually stopped the open shop flood, which, in a short time, would otherwise have engulfed the entire Southwest.

F. J. Holloman (1008-1013).

Lived in Midland in 1914, was Section foreman for Midland Valley Railroad his district covering the switch track in to plaintiffs' Prairie Creek No. 4 Mine.[31]

[30]838, quoted *infra;* see also J. E. Finney, 1021-5.

[31]See *infra,* p. 70a hereof, for his testimony relative to Union threats against his repairing this track.

"Q. Now, Mr. Holloman, you came in contact with the Union Miners around there a good deal, did you not? A. Very often (1011).

* * * * * * *

Q. Did you hear discussion there as to what the miners considered would be the effect on the union if Bache-Denman got started open shop? A. Yes, sir.

Q. What was that?

THE COURT:—Who was it?

Q. By union miners? A. Yes, sir.

Q. What was it? A. Yes, sir, they said they could produce coal cheaper than they did, because the Central Coal & Coke Company, they called it then, I believe, the big concern, grew up that way. **It would throw them out of work. Consequently they would all become open shop mines"** (1013).

A. W. McGEE (763).

Drug store keeper at Midland in 1907-1915.

About 85 per cent. of the men in Midland were Union miners most of whom worked at No. 6 mine of the Central Coal & Coke Company. Knew Mage and Marion Hulsey, Union miners, named as defendants herein (765).

"Q. Did you ever hear any conversation by either of the Hulseys about the company hoisting, the Bache-Denman Company hoisting water, this conversation being about the time that they were running open shop? A. Yes, sir, Mage Hulsey, made a remark in the store, as I remember, that they were hoisting a little water, and it would break the company up the way they were getting it out.

Q. Did he say anything about the company shipping coal? A. **He said they would never ship any coal from there** (765).

* * * * * * *

Q. Did you ever hear any statement by the men that worked at No. 6 Central as to whether or not they were

in favor of Bache-Denman working open shop? A. No, sir, there was none of them in favor of open shop.

Q. Did the men who worked at No. 6 Central say why they did not want Bache-Denman to work open shop? A. They said if they worked open shop they would all be working open shop around.

Q. Did they say why that would be? A. **They said if they let that mine down there work open shop they would all be working open shop in a few d. s.**

Q. All these men who talked and expressed themselves against the Bache-Denman Company working open shop, were most of those men who had worked in the Bache-Denman Mine or men who worked in other mines? A. **Men who worked in other mines"** (767-768).

Huntingdon.

J. L. FINNEY (836-840).

Was a charter member of a Local Union in 1895 before the organization of District 21 in Huntingdon, five miles from Prairie Creek, and lived in Huntingdon through 1914. Population of Huntingdon was then 1700, 80 per cent. miners and the balance dependent on mining trade.

Most of the miners worked for the Central Coal & Coke Company.

The open shop attempt of Bache-Denman in 1914 was talked of in Huntingdon "very much," "by practically everybody." "I heard it on the street."

"Q. State what that discussion was. A. The discussion was generally on the subject of working open shop.

Q. And what was said about that? A. The union miners said they were not going to permit it.

Q. Did they state why? A. Yes, sir.

Q. **Did the men who worked for the Central Coal & Coke Company mines state why?** A. They said if they allowed the Bache-Denman mines to run open shop it would be but a short time until they would all be open shop.

Q. Did they say how that would come about? A. **It would come about through the coal being produced for a cheaper price, and would hinder them in making future contracts.**

Q. Future contracts with whom? A. With the operators.

Q. With what operators? A. The Central Coal & Coke Company for one. The operators I don't think, at that time were organized in an Association like they are now, but they made contracts with the different operators. In 1914 I believe they were. Yes, in 1914 the Southwestern Inter-State Coal Operators' Association was functioning, and they made their contracts through the operators' association in joint conferences, and they said it would hinder them in making their contracts, so they wouldn't get as good terms, and consequently the operators would employ non-union miners.

Q. What operators would employ non-union miners? A. All the operators in the district, eventually.

Q. Did they say what would happen to them? A. Well, they said that they would have to get out and go somewhere else where there were union mines and find employment; that they wouldn't work open shop or non-union.

Q. That was the employees of the Central Coal & Coke Company that you are talking about? A. Yes, sir, the union men at Huntington, generally.

Q. Was anything said by them about the shipment of coal by the Bache-Denman Company? If so, state what. A. **Well, they said they would not permit that non-union to go onto the market in competition with union coal.**

Q. Did these conversations in Huntington occur a few times or many times? A. Many times. It was discussed every day.

Q. During that period? A. Yes, sir, during the period of that non-union work at No. 4.

Q. You have heard that yourself? A. Yes, sir." (838-839.)

G. W. Skow (769).

In 1914 was General Manager of Electric Company at Huntington which supplied Bache-Denman with power. During April to July was frequently called on to repair breaks in high tension line that could not have been caused by accident. Attended meetings in Huntington the purpose of which was to induce his company to cut off the power and was visited by a committee of Union men for the same object.

"Q. Did you hear, during this period, any conversation by Union miners in Huntington, relative to the open shop operation of the Bache-Denman Company, at that time?

A. That is about all that was talked about in Huntington among the miners and everybody else.

The Court:—What did they say?

A. I don't remember all they said, but I remember distinctly that remarks were made on several occasions that as long,—no, **as soon as they started hoisting coal the fun will begin"** (772-773).

IV. Circumstances Indicating that Stewart and his Accomplices were Actuated by the General Policy in Destroying Plaintiffs Mines.

(1) The coincidence of the two attacks with plaintiffs immediate readiness to ship coal.

(2) The intimidation of the Midland Valley Railroad repair gang.

(3) The independent destruction of the cars loaded with coal for shipment to other States.

(4) The failure seriously to molest the little Looper open shop mine and Stewart's comparative indifference to the small open shop mine at Spadra.

(5) The obvious effect on interstate commerce and competition from the destruction of an operation of the potentiality of plaintiffs.

(1) *The Co-incidence of the Two Attacks with Plaintiffs Immediate Readiness to Ship Coal.*

On April 6th, when the 2000 Union men and sympathizers assaulted and drove off plaintiffs' employees, the mine was in prime condition and ready to ship its first car of open shop coal (1446).

Although some men went back on April 15th after the granting of the temporary injunction, they were frightened away again on May 1st by the Clary proceedings (948), and did not come back until they got the protection of the Federal Marshals after Judge Youmans made the injunction permanent on May 8th.

It was not until a few days before July 17th that all the water had been pumped out and the mines were again ready to ship coal (1448, 965).

On July 17th the principal attack was made and the property destroyed.

On October 28th when plaintiffs again attempted to get some coal from an open stripping the Union men promptly made a fourth attack and again frustrated an immediate shipment of coal (1454).

In this connection it is interesting, also, to note Mr. Bache's letter to the United States Marshal, dated May 23, 1914, which though in the original Record, was not called to the Court's attention on either argument prior to the decision (1451):—

"I am advised that it is not the purpose of the Union men, opposed to the operation of the Mine on the open shop plan, to create any serious disorder so long as the Company is confining itself, as it is at present, in spending money in pumping out the mine; but that as soon as they **commence to ship coal, an attempt will be made to stop the operation of the mine.**

This is a matter of common belief and could be testified to by a large number of parties."

* * * * * * *

"I herewith enclose copy of letter, written by me to Mr. John Cameron, Superintendent of Mines, embodying my directions as to the peaceful behavior of employees of the company.

This letter to Mr. Cameron is superfluous as it is very unlikely that the 30 or less men at the mine would deliberately initiate violence with one or two thousand union men on the other side; but I am impelled to give these instructions in writing and at the same time write you, in order to place the company on record before any violence is committed, which violence I am certain will be committed by the union men and their sympathizers unless possemen are placed at the mine when we commence **to load the coal."**

(2) *The Intimidation of the Midland Valley Railroad Repair Gang.*

F. J. Holloman (1008):—

Section foreman, Midland Valley Railroad, 1910-1923, his section covering the switch track into Prairie Creek No. 4 mine. The road runs west from Hartford, Arkansas, through Oklahoma to Wichita, Kansas.

"Q. How do you go to Fort Smith on the Midland Valley? A. Through Excelsior, Arkansas, and Rock Island, Oklahoma.

Q. And then back? A. Yes, sir, back on the Frisco.

Q. How far is it to the Oklahoma line from Hartford? A. About 24 miles.

Q. Are there any stations in between there? A. Yes, sir, small stations.

Q. Any manufacturing centers or anything of that kind? A. No, sir.

Q. Where does the coal go that goes out on the Midland Valley? A. The big part, or all of it goes through Oklahoma.

Q. Did you ever hear of any of it going east? A. I never knowed of it, no, sir.

Q. During that open shop time at Prairie Creek, do you remember that in 1914? A. Yes, sir.

Q. Tell about union miners coming to talk to you when you were repairing the tracks. Tell that incident. A. We had instructions from the general office to line up and keep the tracks in good shape and make repairs, and work of that kind that was coming on, when they got ready to start hauling coal. I got instructions to put No. 4 mine track in first class condition. I went down there with a bunch of men unloading ties and started to work on the track, and we seen there was a bunch gathered down there far enough that we couldn't recognize them, having a little talk. I don't remember, there was one, or probably four, come up to where we was at.

Q. Did you know these men? A. I can't think of the names of any of them that come up there.

Q. Did you know they were union miners? A. I was told by several miners that was working for me that they was.

Q. Go on. A. The spokesman just stepped up and said, 'You are going to repair them tracks for to haul that scab coal out over, are you?'

MR. WARRUM:—The defendants desire to separately object to this testimony, because it is apparent from the answer of the witness that he does not know who they were. Someone advised him they were so and so.

Testimony of that kind could not be binding on these defendants.

THE COURT:—Unless they are shown to have had some connection with these union miners.

MR. DRINKER:—The remark shows they were in a conspiracy. They were trying to get him not to repair the track.

THE COURT:—But you have not shown their connection. Have you any evidence as to who these people were?

MR. DRINKER:—Nothing except what he knows.

Q. Had you ever seen any of them before? A. The men that come up there?

Q. Yes. A. Yes.

Q. Did you know where they worekd? A. Not for sure, no, sir.

Q. What is your best recollection as to whether they worked? A. My best recollection was that they worked at Prairie Creek No. 4.

Q. Before it went up open shop? A. Yes, sir.

Q. Now, tell what they said?

MR. WARRUM:—The defendants renew their objection. There has been no identification of these men.

THE COURT:—He may state.

Q. What was said? A. He asked me if I was going to repair them tracks to haul the scab coal out over. I made a remark something like this: 'I am not going to repair it. I will supervise the work and the men will do it.' He said, 'Not on your tin type you won't. Then I reasoned a little with him. I said, 'I am here hired by the railroad company, and if I don't do the work some other man will. I have got a letter in my pocket telling me to repair that track, and if you object and run us off and cause trouble, you will just cause further trouble, and have soldiers, maybe, and the tracks will be repaired just the same.' I reasoned with him a little and the men stopped work. I told the men, 'Let's go to work, get busy.' He said, 'You are going to repair it any way are you?' I said, 'I am. That is what I am going to do.' He said, 'You will never do it. **There will never**

one car of scab coal go out over this track,' and whirled and went back where the crowd was.

Q. What sort of tone did he talk to you? A. He talked to me rough, mad.

Q. Now, Mr. Holloman, you came in contact with the Union Miners around there a good deal, did you not? A. Very often." (1008-1011.)

This direct threat can be viewed only as an attempt to prevent plaintiffs' coal going out over this Railroad, which could haul it to no point of consumption within the State of Arkansas.

(3) *The Independent Destruction of the Cars Loaded with Coal for Shipment to Other States.*

Of the proof in the former record as to the above this Court said:—

> "The circumstance that a car loaded with coal and billed to a town in Lousiana was burned by the conspirators has no significance upon this head. The car had been used in the battle by some of Bache's men for defense. It offered protection and its burning was only part of the general destruction." (259 U. S. 411.)

The proof at the present trial relative to the destruction of this car, together with two others, and as to rescue of four other loaded cars from a similar fate, was very different from that in the former Record, on which the above inference was based.

While the actual railroad billing of the one car was shown by the same testimony as formerly (1196, 1080-1, 1194), the new testimony produced conclusively negatived the possibility that the cars were ignited during the attack or as part of the general destruction.

The uncontradicted testimony of the employees who hid behind the cars during the battle and who were the last to leave the property, was that none of the cars were on fire when they left, and the necessary in-

ference was that the Union men set them on fire subsequently when the entire property was unconditionally in their possession and when it was totally unnecessary to destroy it as a means of protection for men who were already fleeing many miles away (912, 1166-8, 853-4, 860-1, 1194, 1269).

Furthermore, the present testimony establishes that the cars could not have caught fire from any burning building and must have been the result of several entirely independent ignitions.

When the train crew of the Midland Valley Railroad came up and with the help of the Weston boys rescued four out of the seven loaded cars (1269), there were several cars, not on fire, standing between the car billed to Louisiana and the nearest building. One loaded car also which was then on fire, was standing on a separate track 200 feet from the tipple track and more than 600 feet from the tipple. The situation of the cars necessitated the assumption of at least three separate ignitions, one of the car at the scales, another of the car on the separate track, and a third of the car next adjoining it. The opportune arrival of the train crew was all that saved the other four, which were so situated as probably to have caught fire from those already ignited.

Another circumstance, supplied by the present Record, gives additional significance to the burning of these cars.

In the former record we were able to show the billing of one of the cars, that billed to Nachitoches, Louisiana. The present Record, in addition, contains the testimony of Holloman, above quoted, that the Midland Valley Railroad, on whose tracks these cars stood, served no coal consuming point within the state of Arkansas, so that we now have an attempt to destroy seven cars loaded for an interstate journey, and the actual destruction of three of them.

In this connection it may be noted that there were also Midland Valley cars at the Dallas Mine which barely escaped destruction (994).

(4) *The Failure by the Union Men Seriously to Molest the Little Looper Open Shop Mine.*

O. T. LOOPER (683-689).

Was a charter member of District 21 and a Union miner until 1907, after which he operated a small mine of his own, about three quarters of a mile east of Prairie Creek No. 4, until April 4, 1914, when he was employed by the Bache-Denman Company as Assistant Superintendent. On April 6th was so severly injured by the Union men that he was in the hospital 10 days.

When a member of the Union attended local meetings.

"Q. And will you state whether or not, in attending the union meetings, whether you learned from the discussion of the union miners that took place at those meetings, the policy and practice of the Union as to interfering or not interfering with small mines employing eight or ten men, operated open shop? A. If I remember right the Constitution of the United Mine Workers gives any man the right to operate a small place, where he did not employ more than eight or ten men, on the open shop basis; that the United Mine Workers had no jurisdiction over a place that was operated with eight or ten men.[32]

Q. Based on the period that you were a member of the organization, as a matter of practice, did you know them to interfere with small mines such as you have stated that are operating open shop? A. They did not no more than just to tantalize you; what I call the sweaters come around the mine and delay your work trying to organize the men.

[32]Of course the Constitution contains no such provision. Looper's impression was from the "practical application" of the Union laws, a much more significant guide, where obtainable, than their theoretical paper interpretation.

Q. Was it their practice to actually close out a small mine such as you have described? A. I never knew them to try to force out one entirely; nothing more than aggravate the men and keep them from work.

Q. How many men did you employ when you were operating open shop? A. Not over twelve, I don't believe, at any one time.

Q. And during the time that you were operating open shop, did the United Mine Workers ever actually close you out? A. They did not." (687-688.)

See also testimony of Ritchie who worked for Looper during this period (652).

Obviously the reason for not seriously molesting this mine was the fact that the small local shipments which it could make would not affect the Union Markets.

Mr. Bache, it will be remembered, testified as follows:

"Q. Now, as to the market in which your company distributed its coal, what proportion of your output in the year 1913 got outside the State of Arkansas? A. 75 per cent.

Q. Approximately? A. Approximately.

Q. Could you have operated your properties on the tonnage that you were able to sell in the State of Arkansas? A. No, sir." (1409.)

This testimony tends to refute Judge Pollock's suggestion that if plaintiffs had given a bond not to ship outside the State of Arkansas their property would have been destroyed just the same.

On the contrary, in such event the Union officers would have merely waited for the company to bankrupt itself just as they did during the time the company was pumping out the water.

Certainly it was for the jury to decide this question, if it was at all material.

An additional item of new testimony not in the former record, would also support the same finding.

A few days prior to April 1st, Mr. Bache received a call in his office at Fort Smith from District President Stewart at which they discussed the proposed open shop attempt of which Stewart had evidently learned, Stewart endeavoring to dissuade Mr. Bache from it and stating that he "would have the whole force of the Union" against him. (1445.)

In the course of the conversation Mr. Bache remarked "that the open shop operator down at Spadra seemed to be getting along pretty well, and he (Stewart) said he would not last very long, that the coal was so thin it didn't make much difference anyway." (1445.)

This statement by Stewart is significant in showing that the Union did not fear the competition of open shop mines whose physical advantages were inferior, for the obvious reason that such mines could not so far underbid the Union operators as to threaten their existence. It emphasizes Stewart's fear of the menace of the Bache-Denman mines, working in the thick vein, mines which the expert McAuliffe characterized as "among the most favorably situated mines in the District." (1119.)

(5) *The Obvious Effect on Interstate Commerce and Competition of the Destruction of an Operation of the Potentiality of Plaintiffs.*

In view of the specific statements by the men who planned and carried out the destruction of plaintiffs' property, that they *actually* feared the potentiality of plaintiffs' open shop operation as a competitive menace to the Union mines in the adjoining interstate markets, it was perhaps unnecessary for plaintiffs to go farther and to show that they had good reason to fear this and that plaintiffs' open shop operation was in fact of such a size and potentiality as to have produced the

economic result which the conspirators so stated they feared.

Plaintiffs, however, did produce such further proof.

The Actual and Potential Output of Plaintiffs' Mines.

The complaint did not allege, as this Court supposed (259 U. S. 348), that the five operating companies were mining an annual product, **when working to their capacity,** valued at $465,000——

The allegation is as follows (10):—

"That prior to the year 1914 * * the value of the annual shipments and sale of coal by said mines respectively *exceeded* the following:—

Hartford Coal Company.....	$50,000.
Mammoth Vein Coal Co.....	120,000.
Coronado Coal Co.....	175,000.
Prairie Creek Coal Mining Co.....	120,000."

While the above sums add up to $465,000, this sum was not alleged as the maximum potential output of five mines when working to their capacity (or as stated later in the opinion, the output which the Bache-Denman Mines in most prosperous times could not exceed).

It was alleged as the *minimum actual* output of *four* of the companies during the disastrously unprosperous times, under Union conditions, immediately preceding 1914.

It was to convert this low actual output into the tremendous potential output of which the mines were capable, that the open shop attempt was made.

It was through fear of this that the mines were destroyed by the Union.

At the second trial plaintiffs produced accurate testimony both as to the actual past daily output and as to the maximum potential daily capacity of all seven of the mines operated. This testmony included plaintiffs' Kali-Inla mine in Oklahoma and its Hoffman mine

at Huntingdon, all of which seven mines the defendants, in an article in their official journal written the day after the Riot of April 6th, recognized as part of the group to which plaintiffs' open shop program would be applied provided defendants' proposed attempt to stop the first mine was unsuccessful.[33]

Defendants made no attempt to contradict plaintiffs' testimony on this branch of the case.

In addition to the testimony of Mr. Bache, plaintiffs called Mr. T. A. Freeze, who was exceptionally well qualified. He had begun as a coal digger from 1893 to 1902, when he had been made mine foreman for Finney & Turner. After two years in this capacity he had bought out Mr. Turner, and he and Finney operated the Red Rock Mine, just across the creek from Midland. In 1908 Mr. Freeze went to Prairie Creek No. 4 as mine-boss for the Bache-Denman Company, where he remained two years, when he was made State Mine Inspector for Arkansas, in which capacity he served for three years, his duties requiring him personally to inspect every mine in the State once every ninety days.

He then became Commissioner for the Southwestern Operators Association, his duties as such requiring constant visits to the mines.

Mr. Freeze testified, without contradiction, as to the actual daily output of the six Arkansas mines and as to the possible potential daily output of each if permitted to run open shop (1110-1116).

Mr. Bache testified to the actual and potential output of the six Arkansas mines and also as to that of the Kali-Inla Mine in Oklahoma, giving figures in some cases slightly higher and in others lower than

[33] "The Company has announced its determination to inaugurate the 'open shop' policy at its six mines in Western Arkansas and Eastern Oklahoma next fall. At present they are closed for the summer." (Rec., 546-547.)

The other mine, in addition to the six mentioned, was the one whose open shop attempt the balance of the Article described.

Mr. Freeze (1391-1395). Their combined testimony (to the most favorable construction of which plaintiffs are entitled in the present stage of the case), is as follows:—

	Actual	Potential
Prairie Creek No. 4....	800-900	1400-1600
Mammoth Vein No. 1..	800-900	1500-1600
Mammoth Vein No. 6..	600	800
Coronado	800-900	1200-1300
Hoffman	600-700	1200
Dallas	300	400-500
Kali-Inla	700	1000
	4600-5000 tons *per day*	7500-8000 tons *per day*[34]

Plaintiffs' Mines the Second Largest Group in Arkansas.

The present record also contained other pertinent new testimony as to the size, character and importance of the Bache-Denman group in comparison with the other mines.

Mr. Eugene McAuliffe, who did not testify at the

[34]Mr. Freeze explained that the reason the possible increase in production was proportionately larger at Prairie Creek No. 4, Mammoth Vein No. 1 and Hoffman was because of the possible adoption at these mines of the two men in a room rule (see *infra*, Appendix B, p. 121a). This would not be feasible at Mammoth Vein No. 6 or at Dallas because of the thinness of the vein there (1115). Coronado already had the two men in a room "condition" (1407). For a complete summary of the testimony explaining why and how the different Union restrictions kept down the output and increased the cost, and why this was more marked at some of the mines than at others, see Appendix B, *infra*, pp. 117a-128a.

The only testimony in the former record as to the actual and potential production of any of the mines was that of Mr. Bache and Mr. Denman (pp. 664-6 and 1941, 1955, 1958, 1967 and 1978 of the former record) which related to but five of the seven mines and aggregated 3550 tons actual output and 5150 capacity *per working day*. Possibly this Court confused the daily with the weekly output.

At the first trial counsel for the plaintiffs did not realize the importance of the potential daily output. Their brief in this Court did not refer to it.

first trial, was, with Mr. Freeze, perhaps the man in all the Southwest best fitted to draw a comparison between the potentiality of the different groups of mines in District 21.

Since 1903 he had been Fuel Agent for some seventeen interallied railroads and also Operating Manager of some thirteen coal companies. As Fuel Agent he had charge of the purchase of all locomotive fuel and of development of coal traffic, and of the purchase of coal lands for the railroad companies. In this way he acquired, between 1903-1917, a great familiarity not only with the Bache-Denman Mines but with those of their competitors[35] (1081-1083).

Mr. McAuliffe, after describing the unusually advantageous physical conditions at plaintiffs' mines,[36] stated that these mines "must be classed as among the most favorably situated mines in the District" (1119).

As regards their capacity he testified that their commercial output was exceeded only by one group of mines in Arkansas, those of plaintiffs' principal competitor, the Central Coal & Coke Company[37] (1118-9). This testimony was corroborated by that of Mr. Bache (1408), of J. E. Finney, an independent operator (1025) and of Mr. Freeze (1116-7).

---

[35]During the War, Mr. McAuliffe was Manager of the Fuel Conservation Section of the United States Railroad Administration and so continued during the Readjustment Period after the War until the Railroads were turned back in March, 1920 (1082).

[37]It was this Company, it will be remembered, which enjoyed, under the discriminatory provisions of the Union contract with the Operators' Association, the "condition" permitting the working of two men in a room which was denied to all but one of plaintiffs' group. It was on learning through the accounting suit against its President that this contract had been secured by bribery of Holt and another Union official, that Mr. Bache decided to turn open shop.

[36]Mr. McAuliffe explained that there were but four other mines in the District which worked in the thick vein, two of which were almost exhausted in 1914 (1084). Four of plaintiffs' mines (Prairie Creek No. 4, Mammoth Vein No. 1, Coronado, Hoffman, had this vein) (1086-7). See also Hanraty, p. 512 as to No. 4.

Distinction between Daily and Annual Output and Capacity.

New testimony in the present record also made clear the distinction between the *daily* and the *annual* potential production of the mines and the importance of this in considering the question here at issue—what it was that the Union officers feared as a menace to their economic program.

It was explained that in view of the Union restrictions impairing the efficiency of the operation of the mines, of the open shop competition of the mines in Colorado, Alabama and Southern Texas, and of the discriminatory advantage enjoyed by Central Coal & Coke Company, plaintiffs had been able to sell only sufficient coal to operate half of their mines, and these only on short time,—a few days each week with a total shut down during slack months. It was also testified that on the few days the mines did work they could produce only about two thirds the tonnage which would have been possible had the Union restrictions been removed.[38]

In times of slack demand plaintiffs could not compete with the cheaper cost open shop coal except in the limited circle where they were protected by the freight rates from distant Colorado. The Union usually chose the periods of brisk demand, when the operator was anxious to operate full time, to strike for additional restrictive conditions.

In view of the foregoing testimony, it is obvious that what must be compared to determine what it was that the Union officers feared, is not merely the 50 per cent. potential increase in plaintiffs' *daily* tonnage which the removal of the Union conditions would entail, but the potential annual increase to be effected by working efficiently for as many days in the year as plaintiffs could sell their maximum output.

[38]See *supra*, p. 79a, also *infra*, pp. 117a-128a.

When in his charge Judge Pollock stated that by turning open shop plaintiffs could have increased their production by "one-third or sometimes almost one-half" (2237) he evidently failed to appreciate this important consideration.[40]

In order to put ourselves in the position of Stewart and his accomplices, what we must compare is an actual daily output of four out of the seven mines which were actually running—say 3500 tons—for 160 working days, or a total actual annual output of 560,000 tons, with an annual output open shop of all seven—8000 tons—multiplied by the total potential working days per year—say conservatively 250—or a total of 2,000,000 tons, the latter being about equal to the average actual production of the entire State of Arkansas for 1913 or 1914.[41]

This tremendous possibility in plaintiffs' *potential* annual production open shop as compared to the *actual* annual output under Union restrictions was the very thing which made the Union officers so greatly fear the effect on the Union operators if plaintiffs' mines were permitted to run undisturbed open shop.

Corroborative Circumstance as to the Potentiality of Plaintiffs' Mines on Prices in Interstate Commerce.

In connection with the potentiality of plaintiffs' mines to affect prices in interstate commerce and the Union's fear that if they got started open shop it would disastrously affect the Union relations with the Union operators, it is important to consider Mr. Scholz's testimony that when Mr. Bache signed his separate contract in 1910, granting the wage increase demanded by the miners, the other operators, who were unwilling to

[40]Plaintiffs' sales agent testified that by running open shop plaintiffs could have sold their entire potential output and have trebled their annual tonnage (1431, see also 1393; see quotation, *infra*, p. 93a).

[41]1407.

make an attempt to operate open shop (1435), were promptly forced to grant the Union concessions and start up.

"It broke the strike so to speak." "It caused the others to do the same thing, because the other mines did not want one mine to operate and have their mines closed down. * * * When we found Bache was going to start his mines we felt it necessary to resume likewise, because if he would have resumed and we would have been idle he would have gotten a great number of men from the mines that had been closed down, and we would not have been able to operate."

"Q. How about your markets? A. He would have taken our markets, of course" (Scholz, page 1798; see also 1437).

The Saving in Cost of Production by Open Shop Operation.

Mr. McAuliffe, (who, it will be remembered, did not testify at the previous trial) testified that in his opinion an Arkansas mine, with an operating cost of $1.75 per ton, producing in 1914, 800-1000 tons per day under Union conditions could reduce this cost, by operating open shop, by 25-40 cents per ton (1093) without any increase in tonnage and merely by increased efficiency in operation (1361). He further testified that, with this operating advantage, the market could have been very greatly expanded, with a consequently large increase in daily and annual output (1361), and that this increased tonnage, being distributed over the same overhead expense, would have resulted in doubling the saving in cost per ton (1361).

"Q. Mr. McAuliffe, you testified in answer to a question of mine that in case of a mine producing in 1914 in the Hartford Valley, 800 to 1000 tons per day, operating under a union scale, allowing only one man to work in a room, and with the other conditions

then in effect under a union scale, and with an actual of cost of $1.75 per ton, that in your opinion that cost would have been reduced from 25 to 40 cents per ton under open shop conditions. Now, in giving that opinion, did you contemplate any decreased cost due to increased output or production?

A. I did not.

Q. Taking into consideration the factor of increased output, as well as the other matters considered by you in your previous answer, what in your opinion would be the total saving by open shop operation, under the other conditions?

A. From 50 to 80 cents per ton, depending on the mine and physical conditions.

Q. In giving your opinion this morning and just now, did you contemplate any general reduction in wages?

A. No, sir. I am not sympathetic with low wages.

Q. In your opinion, would a general reduction in wages in the Sebastian County field, in 1914, have resulted in a reduced cost?

A. No. In the control of mine property, the adjusting of wages, increasing for the more skilled men and reducing correspondingly to the less skilled, would be advantageous, but in the matter of a general reduction, no." (1360-1361.)

Mr. Puterbaugh,[42] who had also operated with union and open shop mines in this field, stated the saving by open shop operation at 50 cents per ton (1430), but was not permitted by the trial Court to explain whether or not this estimate took into account increased tonnage.

Mr. Bache estimated a saving of from 50 to 75 cents per ton[43] (1423).

[42]Although Mr. Puterbaugh testified at the first trial, he was asked no questions on this point.

[43]Mr. Bache testified that he did not contemplate a general reduction in wages, but an adjustment in working conditions, by which skilled men would be restricted to skilled work, the manual labor being done by unskilled laborers at current wages.

The apparent discrepancy between the testimony in the first record

The other side made no attempt to modify or to contradict this testimony.

The Factors Entering into the Competitive Marketing of Coal.

The former Record contained no expert testimony as to the economic laws governing the sale of coal in the competitive markets. In the absence of such evidence this Court was apparently of the impression that plaintiffs could have reaped their greatest profit in operating open shop by pocketing the comparatively small initial saving in actual operating costs.

This omission has been supplied by the present Record, and consists of extracts from the testimony of Ex-

and that in the second is not real. At the first trial witness Hilling estimated a reduction of 15 cents to 20 cents per ton as a result solely of the elimination of one restrictive condition, allowing but one miner to work in a room (Old Rec., p. 2301). Witness King testified that his own cost in operating his small mine open shop had been reduced 17 cents per ton, although he was paying higher than Union wages (Old Rec., p. 2051). Mr. Bache himself figured his probably cost reduction at not less than 20 per cent. or 35 cents on his then cost (Old Rec., p. 682).

The above testimony was only as to saving expected from elimination of restrictive Union conditions, without taking into account the enormous increase in aggregate annual tonnage possible from this large group of mines.

Witness Cameron, however, in his letter (which contrary to this Court's impression Bache did not dictate, Old Rec., pp. 1025, 715, 716; Present Record, 1500-1503), estimated that the cost would be reduced from $1.60 per ton to $1.042 (Old Rec., pp. 719-720; Present Record, pp. 1501-3). This estimate covered only the operating cost and did not include the additional saving from reduction in overhead per ton by increased tonnage.

This estimate, as Mr. Cameron's figures show, covered only the saving in actual operating cost and did not include the additional saving through reduced overhead on increased tonnage. It was the detailed and official estimate of the Company and amounted to 55.8 cents per ton. Under the familiar rule plaintiffs were entitled to the full benefit of this testimony which apparently the Court overlooked. On the first writ of error plaintiffs' counsel did not realize the importance of this matter and so did not give the Court the benefit of a specific reference to this testimony.

It is interesting to compare Mr. Cameron's statement as to the proposed wages to the open shop employees (1503) with those fixed in the Union contract of 1912-1914 (1477-8).

President Hanraty and from that of Messrs. Sholz, Bache, McAuliffe and J. E. Finney.[44]

"Q. Were you ever as much interested in West Virginia as in Colorado and Alabama? A. No, sir, because the freight rates from West Virginia cost more, and therefore it did not come in as close competition with us as Alabama and Colorado.

Q. Now, just explain briefly how the freight rates protect union mine from a non-union mine in this district; these things are very familiar to you, but they are not to the jury. A. The only protection that it gives the union operator is the freight rates get so great they cannot compete wih the union coal. In other words, they ship coal east from Trinidad, Colorado, into Oklahoma City and Shawnee, and one car of coal was laid down in Pittsburg County, right in the heart of the coal fields of Oklahoma.

Q. But there is a place where the freight rate gets so high it counteracts the difference in the cost of operation, is that the idea? A. Yes, sir, that is the idea exactly.

Q. If the Colorado mines, non-union mines, instead of being situated in Colorado, were situated in Oklahoma, what would be the effect on the Arkansas mines? A. There would be no union mines in Arkansas or Oklahoma.

Q. Why not? A. Because they could not compete with the open shop, or non-union mines." (Hanraty 503-504.)

Particular attention is directed to the two questions and answers last above quoted.

This Court reversed the former judgment against District 21 because, in its opinion, there was on the former Record, "nothing in the circumstances or the declarations of the parties to indicate that Stewart,

[44]The purpose of the introduction and elaboration of this testimony was to make entirely clear the economic and marketing conditions governing the coal market. Although, as shown by the statements of the Union officers in the present record, such conditions were entirely familiar to these defendants, they are not apparently matters of which the Court would take judicial notice in the absence of direct testimony.

the President of District No. 21, or Holt, its Secretary-Treasurer, or any of their accomplices had in mind interference with interstate commerce" when they conspired to destroy the property. (259 U. S. 411.)

In view of the testimony in the present Record as to the constant discussion and fear by these very District Officers of the inroads of open shop coal from Colorado and Alabama, mined many hundred miles away and handicapped by the high freight rates into the District 21 territory, it is apparent why they so much more greatly feared the effect of the operation of open shop, in their very midst, of the second largest group of mines in the State of Arkansas.

The distinction, above explained by Ex-President Hanraty, between the competition of distant open shop mines, handicapped by freight rates, and that of such a mine operating in the heart of the Union territory, with no such handicap, was also clearly brought out by Mr. Scholz, who, it will be remembered, prepared and presented the statement of the Southwestern Operators to the Joint Convention of 1912, attended by Stewart and the other District Officers:—

"Q. In this statement that you read you mention the fact that you Arkansas and Indian Territory operators were very much hampered by the open shop competition of Colorado, New Mexico, the Texas lignite mines, Alabama and Kentucky. If that was so, how was it that you had managed to survive until 1914, and how was it that they did not put you out of business? * * *

A. Freight rates are usually based to cover certain zones surrounding the mines. Between these two zones is what we might call a 'No-Man's Land,' which is competitive to the two invading districts. The railroads would not permit coal from Colorado to be shipped to McAlester, because the cost of transportation would be prohibitive to do so; therefore we were able to supply a limited territory immediately surrounding our mines, which the other mines

could not reach. That was the only thing we had left." (1794-5.)

Scholz went on to explain that when an open shop mine got going in competition with a closed shop mine shipping to the same territory under the same freight rates "The closed shop mine could not possibly sell coal * * * by reason of the difference in the cost of production, therefore, the closed shop mine could not resume operation." The success of the open shop mine due to reduced cost of production "would be further augmented by the increased tonnage which would be followed by a still greater reduction in the production cost." The increased tonnage of the open shop mine would be produced "at the expense of the closed shop mines which would then not be operating at all or under very much restricted production," the decreased tonnage of the closed shop mines further increasing their cost. The necessary action on the part of the Union operators would be that "they would either have to go on the open shop basis or shut down." If they went open shop the result would be that the other Union operators "their neighbors on the other side" "would have to follow suit." (1795-6.)

> **"There would not be any** (Union operators) **left** (in the district). **They could not possibly live under the agreement."** (1795-6.)

As bearing on the far reaching effect which the District Officers knew and feared would result from permitting any large open shop mine to operate in the heart of District 21, another phase of Mr. Scholz's testimony is significant. He testified that out of the 50 operators attending the joint Southwest Convention, all, with possibly two exceptions were very unwilling to continue the closed shop relations, and entered into them under protest, and so advised the Union men. The sole reason for continuing the rela-

tions was the coercion of the Union men in intimidating the employees, etc.

All that was necessary to give them the courage to start open shop was the success of one operator "running without interference on the part of the Miners' Organization." "If one man would start it, I am sure the others would have followed."[45] (1797.)

Mr. J. E. Finney, who had had eighteen years experience in the coal business in Western Arkansas, operating both Union and non-union properties in and immediately adjacent to the Hartford Valley, described in detail the mines of the Central Coal & Coke Company, the Western Coal & Mining Company and the Bolen-Darnell Coal Company in this immediate field. He then testified as follows:—

"Q. Mr. Finney, state where the market was for the coal mined in the Midland and Hartford fields, Midland, Hartford and Huntingdon fields. A. About eighty-five per cent. of the coal from this field was shipped to Texas, Oklahoma, Kansas, Nebraska, and Kansas City, Missouri. (1021.)

Q. With what kind of labor, whether union or non-union, in 1914 were the mines being operated in the Hartford, Midland, Jenny Lind and Greenwood Coal fields? A. All mines, as I recall it, were operated by union labor except the mines known as the Bache-Denman mines. * * *

Q. Mr. Finney, if the Bache-Denman mines had successfully opened their properties upon a non-union basis and had placed on the markets of Oklahoma, Texas, Kansas and Missouri five thousand tons a day, mining it at a cheaper cost than the union coal can be operated, what effect would that production and marketing in interstate commerce have on the production produced by the Central Coal & Coke Company and the other mines in Sebastian County in

[45]As to specific statements by participants that the Bache-Denman open shop success would have been at once followed by their principal competitor, Central Coal & Coke Co., see *supra* under Subheading III of this Appendix A (*supra*, pp. 56a-66a).

western Arkansas ultimately? A. In my judgment it would practically put these union mines in western Arkansas out of business.

Q. If they did not go out of business upon being undersold in that way, in what way could they continue in business if at all, as to the matter of labor, whether they could resort to non-union labor and thus meet the competition of other non-union coal or whether they could in any other way than resorting to non-union labor stay in the market? A. It would be necessary for coal coming in competition with this non-union coal to be mined by non-union labor if they should continue in business." (1021-1025.)

The same important distinction made by Messrs. Hanraty and Scholz relative to the more serious effect of nearby than of distant open shop competition was explained by Mr. McAuliffe (1100):—

"A mine that can exist at all can always sell a certain amount of coal. It must sell to exist. The ability to spread out, to travel a distance from the point of production, is dependent upon two factors, the cost of production and the freight rate. If the cost of production is low, necessarily, an operator adding the low cost to his fixed freight rate can go further than he could under the higher scale. If his cost is increased by any means, natural or artificial his frontier line must necessarily be protected when he is in competition with other coals. If under a given cost and given freight rate an operator can move coal within a territory extending in one or more extensions 200 miles from his mine and his cost is reduced, he can expand that territory; he can go a still further distance; he can increase his market territory. If his cost is increased he will necessarily have to contract, be satisfied with less territory. There is a continual overlapping and change in the frontier line of cost distribution, fluctuation in costs, difference in freight rates, affecting the market territory that any company or any district can put its coal into."

Mr. Bache also testified to the same effect. (1412-1414.) He further explained the extraordinary competitive conditions governing the marketing of coal, and brought out the fact, which would not otherwise be apparent, that in mining coal the immediate labor cost is 75 per cent. of the value of the finished product f. o. b. the cars, which it is believed, obtains in *no other considerable industry.*[46] In the case of a pair of trousers selling for $1.75, the cost of labor in fashioning the materials is probably not more than 20 cents or say 12 per cent. The Garment Makers Union are interested in the price and able to control it only to this very limited extent.

In the case of coal, however, as testified by Mr. Bache, (1412-1414), the value of the raw material in the ground is not more than 25 per cent. of that of the finished product; of the $1.75 cost f. o. b. cars of coal mined by Union Labor, 75 per cent., or $1.30 consists of wages paid to members of the United Mine Workers. In the coal business, therefore, the ability to market the product under the extraordinary competitive conditions prevailing depends in a unique degree on the ability to keep down the labor cost. The freight rate is beyond the operator's control, the physical conditions are immutably fixed by nature, the cost of the coal in the ground is proportionately very low.

Two items of cost remain which the operator can change,—cost and efficiency of labor, and skill of management. The latter is nullified to the extent that its exercise is restricted by costly and uneconomic union regulations and "conditions."[47] Rates of pay cannot

[46]In coal mining, the entire process of manufacture from the raw material to the finished product, takes place on the same day. The business of coal mining is thus inseparable with transportation. In the morning the coal is in the bed; in the afternoon it is in the railroad cars on its interstate journey. By the testimony in the present record all bituminous coal is sold before it is mined (1350), it being commercially impossible to store it.

[47]For a summary of the Union restrictions and conditions nullifying the skill of management see Appendix B, *infra*, pp. 117a-128a.

be regulated by economic law when an all powerful combination, such as the Miners' Union, forbids and prevents, by intimidation and violence, if necessary, all adjustment of wages, and all attempts to restrict skilled men to work requiring skill, and denies the employer the right to hire unskilled laborers to do purely manual labor.[48]

The extraordinary power of this particular organization to dominate the production and distribution of coal depends to a great extent in the above circumstance, as well as the wide distribution of coal, the intense competition for the sale of coal from different states in the several markets.

None of the above testimony nor any testimony like it was in the prior Record.

The circumstances thereon brought out make it entirely clear why it was that Stewart and his associates, who constantly worried about the competition from the open shop mines in Colorado and Alabama, hundreds of miles away, so much more feared the menace of the seven Bache-Denman Mines capable of producing 8000 tons per day for 250-300 days in the year, and, because of their operating advantage of 50-80 cents per ton, of underselling the Union operators of District 21 in the competitive markets of Oklahoma, Texas, Kansas, Missouri, Nebraska and Minnesota.

When the jury heard how Stewart and his fellow officers were so insistent for the organization of Colorado "for the purpose of raising the price in Colorado so, the coal could not come in competition with us," (502) they could well understand why, when they knew that Mr. Bache was determined to operate open shop, Stewart went at once to White and together "they had arranged a plan up there to prevent Bache from producing coal." (950.) They could further understand,

[48]See new testimony as to the above, pp. 503-4, 1794-6, 1021-5, 1412, 1414, quoted *infra,* Appendix B, pp. 117a-128a.

also, why it was that White himself insisted on seeing McNamara and Slankard in person, explaining to them the supreme importance to the organization of preventing plaintiffs from shipping their coal out of the Hartford Valley and telling them plainly that if and when plaintiffs were ready to ship coal, then "it was time to act" (971) and why when plaintiffs were so ready they obeyed White's orders and destroyed the property.

The Expansion of Market Resulting from the Foregoing Saving in Cost in Open Shop Operation.

Mr. Puterbaugh, plaintiffs' Sales Agent, a man with very wide experience in the selling of coal in the competitive markets available to the Operators of District 21, testified without attempted contradiction that a reduction in the price of plaintiffs' coal of 25 cents under the price charged by plaintiffs' competitors, **would have trebled plaintiffs' output,** and have enabled plaintiffs to sell the maximum potential output of all their mines before their competitors sold any coal whatever (1431):—

"Q. Mr. Puterbaugh, if in 1914 you had been authorized by the Bache-Denman Company to sell their coal at 25 cents under the price at the time charged by their competitors, including the Central Coal & Coke Company, to what extent, if any, could or would that have resulted in an increase in the Bache-Denman output? A. If I had been authorized to sell their coal at 25 cents less than their competitors, we could have sold all they could have produced before their competitors could have sold any.

Q. How much increase would that have resulted in in their output? A. About three times."[49]

The Distribution of Plaintiffs' Coal.

The present Record contains all the testimony of the previous Record as to the distribution of plaintiffs' coal in interstate commerce, and much more.

[49]See also McAuliffe, 1101.

There is apparently no dispute but that 75 per cent to 86½ per cent. of plaintiffs' output had been shipped to customers outside the state.

Mr. Bache testified as follows:—

"Q. Now, as to the market in which your company distributed its coal, what proportion of your output in the year 1913 got outside the state of Arkansas? A. 75 per cent.

Q. Approximately? A. Approximately.

Q. Could you have operated your properties on the tonnage that you were able to sell in the state of Arkansas? A. No, sir.

Q. Did your business consist of spot sales or contract sales or what? A. The business consisted partly of contract business and partly of what you term 'spot' business, although that is not the term we use here.

Q. That is the eastern term? A. Yes, sir. Contract business and current business is what it consisted of.

Q. Have you any idea of what proportion they bore to one another? A. Taking them as a whole, about half and half. It varied in different mines." (p. 1409.)

* * * * * * *

"We sold it under the trade name of Bache-Denman's *Carbonita coal.* We got a higher price per ton for it, and there was a good demand for it, and we could sell it on the market further away. We shipped a lot of it in the northwest. It was a hard coal, good for domestic purposes." (p. 1406.)

He further testified that among the principal markets in which his coal was sold and delivered were Oklahoma City, Dallas, Texas, Kansas City, Omaha, Lincoln, Minneapolis, and St. Paul, in which markets it met both Union and non-Union coal.

Mr. J. E. Finney testified as follows:—

"Q. Mr. Finney, state where the market was for the coal mined in the Midland and Hartford fields,

Midland, Hartford, and Huntingdon fields. A. **About 85 per cent. of the coal from this field was shipped to Texas, Oklahoma, Kansas, Nebraska and Kansas City, Missouri."** (1021.)

Mr. Thrasher, the plaintiffs' bookkeeper, made an analysis of the invoice sheets of coal shipped from Prairie Creek No. 4 for ten months prior to March, 1914, showing 86½ per cent. of interstate shipments (1334).[50] E. G. Castell the Frisco billing agent, stated that practically all the Coronado coal went interstate (1249). All the coal going via the Midland Valley necessarily went to other States (1008-9).

Mr. McAuliffe testified as follows:—

"Q. Mr. McAuliffe, in the coal business as carried on in Arkansas is there any place to store coal that has been mined? A. No, except in cars.

Q. And in the cars, how long can it be stored? A. Unless billing is furnished the railroad for movement of those cars by five p. m. or thereabouts, on the day which they are loaded, no cars, or a restricted number of cars will be furnished the next day. In other words, the loaded cars will be charged against the number for the next day, or until they are moved.

Q. And does a coal company mine coal until it has a place to dispose of it, until it is sold? A. Constructively the coal company must and should have a disposition for the coal that it loads into the cars ordered on a given day, but sometimes during bad market period it will not have a market for the entire day's output; screenings might be unsalable, while the other sizes there is a sharp demand for. Certain kinds might not be marketed on that day.

Q. But as to the other part —— A. They have a market when the cars are ordered.

Q. You mean by market, that it is already sold before it is mined? A. The disposition will enable

[50]The remaining 13½ per cent. obviously included all the coal destined for Arkansas points via the Midland Valley Railroad which ran through Oklahoma back to such Arkansas points.

them to say to the railroad where the coal is to be billed to.

Q. It is mined on orders? A. Yes, sir." (p. 1350.)

Mr. Puterbaugh testified as follows:—

"Q. Did you in 1913 and 1914 sell some part of the output of the Bache-Denman mines in the Hartford Valley? A. Yes, sir.

Q. What part? A. We sold a very substantial part of what those companies produced.

Q. Approximately, what proportion of the Bache-Denman Company's output, at the end of 1913, or during 1913, was sold to be shipped out of the state of Arkansas? A. Of the coal we sold, which was, I think, representative, about 80 per cent.

Q. 80 per cent. of the coal you sold went out of Arkansas? A. Yes, sir.

Q. Now, the Bache-Denman business, as it existed at the end of 1913, was that a spot business? Do you understand that word, what we call 'spot'? I think you call it 'current' business. Was it current business or was it on an annual contract basis, or both, and describe it in that connection briefly? A. Well, I will say that about one-half of their tonnage was sold on annual contracts, and about one-half on current orders, standing orders.

Q. What do you mean by 'current orders'? A. Orders that were placed to be shipped as soon as they can be shipped.

Q. State whether or not the Bache-Denman coal has a special good will on the market, and if so, describe what it was. A. Well, it had a special line of customers, if that is what you mean by good will.

Q. Who asked for that particular kind of coal? A. There were certain customers that knew the coal, and we had more or less established trade at the time. The coal was sold in the north for domestic trade under the name of Carbonita.

Q. What coal? A. The Arkansas coal produced in Sebastian County by the Bache-Denman Company.

Q. Was that restricted to Bache-Denman coal. A. Yes, sir.

Q. What was that used for? A. That coal?

Q. Yes. A. For domestic trade, furnace and household purposes. That was the general trade name of the coal on the market.

Q. In general, in what states or cities was that sold for that purpose? A. In all the territory, including Kansas City, St. Joe, Omaha, Lincoln, Topeka and Wichita.

Q. Did any of it go north of that? A. A small tonnage sometimes went to Minneapolis and St. Paul, and to northern Texas and Arkansas.

Q. Describe briefly where the Bache-Denman coal went, what markets you put it into, and with what coals it competed. We have been over that with other witnesses, so I want you to make your answer brief.

THE COURT:—He stated what markets this Carbonita coal reached.

Q. (Continuing.) You need not cover Carbonita. Cover the other coals, mine run and slack and so forth. A. That is the year 1913 you are talking about?

Q. Yes, just before the open shop? A. I would say that about 40 per cent. of their tonnage moved into the northern territory, which we call the Kansas City territory, Missouri, Kansas and Nebraska.

Q. What coals did that meet? A. It met all that coal that they produced, but primarily the lump or nut sizes go north, and the slack and the mine run coal will be moved to Arkansas and Texas. I would say of the total tonnage about 40 per cent. went into the northern territory, Missouri, Kansas and Nebraska, and about 40 per cent. to Texas, and about 20 per cent. to Arkansas.

Q. What coal did that meet in competition? A. All coals.

Q. What coal did that meet in competition in these northern markets? A. Well, it met all other coals that were sold there, including Illinois, Pennsylvania anthracite, Kansas coal, and Iowa coal. All coal is competitive, like food is competitive. Any coal that is up there, it will compete with.

Q. The coal that went to Texas, what did that meet? A. That met coal from Alabama, Colorado and New Mexico, and coal from Oklahoma, more than any of them." (p. 1427-28-29.)

According to this testimony, plaintiffs had built up a good will for their product in these other States of great value, which the Union deliberately wiped out.

The Anti-Trust Act gives redress for the destruction not only of tangible physical property; it specifies the **business** and property as the subjects of redress.

Business, as distinguished from property, means good will.

Plaintiffs had a valuable and recognized interstate business and **goodwill** which defendants destroyed and must have known they were destroying and specifically intended to destroy.

Mr. Bache's Intention as to the Reduction of the Price of His Company's Coal.

This Court said:—

"Nor could it be inferred that Bache intended to cut the price of coal. His purpose was probably to pocket the profit that such a reduction made possible." (259 U. S. 412.)

There is no doubt whatever that plaintiffs' object in attempting to operate open shop was to make money,—to turn an operation which for a period of years, had shown an average net loss of from 5 to 10 cents on a relatively small tonnage, into a profit of 25-50 cents on a hugely increased tonnage.

At the first trial plaintiffs failed to introduce the expert testimony of the men familiar with this business, found in the present Record, explaining how the saving in cost of producing coal so greatly increases with the tonnage (both daily and annual) and how, as explained by Mr. McAuliffe (1360-1), in the passage above

quoted, an initial saving of 25-40 cents per ton can readily be turned into an ultimate saving of 50-80 cents, by dividing the initial saving with the consuming public, thus increasing the output at the expense of competitors whose lower margin of profit will not permit them to meet the reduction. This in turn results in a great additional saving, which can still further be divided if necessary, in the same way, until the output reaches the utmost capacity of which the mines are capable.

With this explanation, which in the present record was fully given, not only by Messrs. McAuliffe, Scholz, Freeze and Bache, but also by Ex-President Hanraty of District 21, the jury would be warranted in finding that plaintiffs could ultimately have made a great deal more money by utilizing the 25-40 initial saving in actual operating cost (which would have resulted from the removal of the oppressive Union restrictions) to increase their output at the expense of their Union competitors.

Under Mr. McAuliffe's testimony and that of Mr. Puterbaugh, if plaintiffs had used this entire initial cost reduction in a reduction of the price charged, the consequent increased tonnage would have resulted in an equal additional saving which would have turned their 5-10 cent net loss into a net profit of 20-30 cents on an enormously increased annual tonnage (1360-1).

In the beginning of the year 1914, prior to the open shop attempt, the Dallas mine had been shut down for a year,[51] and the other mines were mining on short time, due to the inability to compete in distant markets against the non-union mines surrounding District 21, and in the nearby markets against the discriminatory operating advantages which the Union contract allowed the Central Coal & Coke Company and plaintiffs' other home competitors.

[51]Complaint, p. 21; 995.

It was to remedy this very condition that the open shop attempt was made, and it was solely through fear of the obvious result of it that the properties were destroyed by the Union.

With the explanation of business conditions by these expert witnesses, Union men as well as operators, it might appear superfluous to know what was Mr. Bache's *actual* purpose with regard to reducing the price of his coal. The obvious inference would apparently be that Mr. Bache would take the course of action which, in the long run, would result in his companies reaping the greatest aggregate profit. This was to reduce his price sufficiently to enable him to sell his entire output, taking the tonnage from his competitors, who, under the Union scale, could not afford to meet his reduction. Plaintiffs would thus secure their ultimate profit from the further cost reduction resulting from the great increased tonnage.

By this means, instead of a profit of 20-30 cents on the small tonnage of 500,000-600,000 tons previously produced, he would make an equivalent profit on 2,000,000 tons.

In order, however, that there be no possibility of a misunderstanding and to meet specifically the omission in the former proof noted by this Court, Mr. Bache was asked the following questions:—

"Q. Now if you had got your mine going open shop, did you intend to cut the price at which you sold your coal, and if so, to what extent? A. I did intend to cut the price of the coal sufficiently to enable us to operate our mines practically full time; in other words, to reduce our price sufficiently in the competitive market to enable us to get business in markets that theretofore we had been unable to reach on account of our cost, and also to take in other business that I could get (1423).

* * * * * * *

I concluded that I would make a very substantial saving in the cost of operation, and that with that substantial saving I would be able to sell my coal at a price sufficiently low to enable me to go out into the territory which we had lost, on account of the high cost of our production, and get back business which had gone to competitive coals in Colorado, Alabama, and elsewhere in the non-union Districts, and we could get back from some of the railroads contracts for coal which they had quit buying, because of the high cost of the coal" (1437-8).

* * * * * * *

"We expected to reduce our cost to such a point that we could go out in the market and reduce our price and increase our tonnage and make some money" (1438).

V. New Testimony Warranting a Finding that the Causes of Local Bitterness against Mr. Bache Suggested did not Influence the Conspirators.

While, as a matter of law, the introduction of new testimony sufficient to support an affirmative finding of an actual intent to restrain commerce was sufficient to take the case to the jury, plaintiffs, in order to fortify their case with the jury and to give this Court the benefit of the facts as they were actually found to have occurred, questioned a number of the witnesses at the second trial as to these matters, which, at the first trial were referred to only in the Journal Articles whose purpose plaintiffs contended was merely to deceive every one reading them as to the true cause and object of the conspiracy.

It would appear to be significant that in Mr. Warrum's opening to the jury, which is fully reproduced in the present record at pages 169-175, he does not refer to any of these circumstances, except incidentally to the alleged breach of contract and as to this did not claim that it had anything to do with the destruction of the property three months later. The sole issue which he outlined[52] was based on the position taken by him at the first trial and so pertinently commented on by this Court, that the attack was the result solely of a spontaneous uprising of an outraged community in

[52]This was the sole issue which counsel made at the first trial. See Judge Elliott's remark "I think that covers it, don't it, gentlemen?" after his charge making the sole issue the "uprising of the community against the guards" *vs.* prevention of shipments to the markets of the Union operators (Former Record, pp. 3219-20). A reference to the former record as indicated will show that counsel for defendants made no further suggestion in answer to Judge Elliott's inquiry. The same issue was made by defendants' XIII Request to Charge (Former Record, p. 3228).

The suggestion which this Court accepted as the primary cause for the attack, was made for the first time in the argument of counsel in this Court.

protest against the insults and depredations of plaintiffs' "armed guards and thugs."[53]

The testimony hereafter quoted was introduced by plaintiffs as part of their case in chief. In spite of this Court's pointed suggestions as to its impression, from the testimony in the first record, of the real ground for defendants' proper defense, no testimony was introduced to contradict this testimony offered by plaintiffs. Not one of the hundreds of Union miners who participated in the attack was called by defendants to testify that he or any of his friends had been evicted from any house, that Mr. Bache had reduced the wage scale, that the attack had been prompted by an alleged breach or attempted evasion of contract on the part of Mr. Bache, or by his importation of strangers or preparations for violence on the part of the Union men. While one or two of defendants' witnesses testified that on April 6th speeches were made by the Union men in which they referred to Mr. Bache's "severance of relations" with the Union, none testified to any such speech within three months before the attack on July 17th, or claimed that this had in any way influenced the actual participants in the Battle. Such speeches, as McNamara testified, were framed up in advance to "camouflage the public." Also "severance of relations" is a different matter from a justified breach of contract.

If the circumstances suggested by the Court represented the actual facts, defendants could have produced

[53]Under the new testimony in the present record the word "thug" and its synonym "armed guard" is, as it were, a technical term having a particular significance when used by Union men, and meaning "one who guards non-union property." It has nothing to do with the character, profession or reputation of the man referred to, and is applied equally to ministers and school teachers, regardless of their standing and behavior. The use of these terms, and the propaganda as to the "armed guards and thugs" is a regular part of the program of the United Mine Workers practiced by them "all over the country" in all strikes "to camouflage the public." McNamara, pp. 942-944, 949-950, quoted *supra*, pp. 52a-53a.

scores of witnesses so to testify. Instead they relied on their consciously false Journal Articles, which were not subject to cross examination.

"Breach of Contract."

The contract which Mr. Bache is alleged to have broken was that between the United Mine Workers and the Southwestern Operators Association. There was no separate contract with plaintiffs' companies, but the operating companies were members of the Association.

McNAMARA:—

"Q. In connection with the attack on these properties, did the fact that the contract between the operators' association and the miners did not expire until the end of July instead of having it expire on the first of July, did that have anything whatever to do with the attack on the property? A. No. sir.

By THE COURT:

Q. Was that matter ever talked between you and anybody else? A. What matter is that?

Q. This contract, when it would expire? A. No, sir, it never was.

Q. Never was talked over? A. No, sir." (963-4.)

BACHE:—

Extract from testimony as to a conversation by Mr. Bache with President Stewart, a few days prior to April 4th:—

"I told him that the contract had repeatedly been broken by the miners, by the union, and that I had just ascertained that large sums of money had been paid by some of the operators in order to procure the contract that was then in existence. He remarked that he would like to get the thing fixed, and I said, 'Well, I tried to get the inequalities worked out before, and you agreed to eliminate them, but you broke that contract, and I am not disposed to believe you would carry out what you would promise." (1445.) (See also *infra*, p. 108a.)

* * * * * * *

Q. When you told him that he had broken the contract, what did you refer to then? A. I referred to the contract made in 1910. (1445.)

* * * * * * *

Q. Did the Union permit you to work two men in a room under that contract? A. They had gone flat back on the contract and refused to let us work two men in a room.

Q. Go on with the conversation. A. I said that I did not have much confidence in promises, and he said he thought I was making a great mistake, that I would have the whole force of the union against me. (1445.)

* * * * * * *

Q. Did he comment on your statement about the breaches of the contract? A. He deplored the breaches of the contract in a general way, and said they were *local strikes.* As to the particular breach that I complained of, for which he himself was responsible, he did not make any reply. (1445.)

THAREL, (storekeeper at Midland in 1914, since moved to Oklahoma).

Cross examination (in full).[54]

By MR. WARRUM:

Q. You heard these discussions among the miners, the local miners, as they gathered around the store? A. Yes, sir.

Q. But you never heard them say that Mr. Bache or his company had broken his contract that they had with the local, to work the union scale until July, 1914? A. I never heard anything about the contract being broke.

Q. They never complained of that at all? A. I don't remember it, no, sir.

Q. What? A. I don't remember hearing them say anything of that kind" (1016).

[54]Plaintiffs had not asked this witness on direct examination as to any discussions by the miners of the alleged breach of contract.

Attempted "Evasion" of Contract by "Manipulation" of Corporations.

BACHE:—

"Q. What did you do in preparation for your open shop operation; did you consult your attorneys? A. Yes, sir. * * * Read & McDonough. (1438.)

* * * * * * *

Q. In what connection did you consult them? Had you had previous experience with an attempt to operate open shop, other than the experience you had in 1910? A. Yes, sir. In Oklahoma.

Q. Without going into detail, were you able to operate there? A. We did, successfully.

Q. By reason of what circumstances? A. Protection afforded by the United States courts, in the way of deputy marshals.

Q. Federal Courts? A. Yes, sir.

Q. What was the condition at that time of the Department of Justice, and the state officers in Sebastian County, relative to Union sympathy? A. I knew we would get no protection whatever. (1439.)

Q. What experience of yours, or information other than what you have detailed led you to anticipate trouble, or otherwise, in connection with your open shop operations, very briefly? A. The experience at our own mine in 1910 and the experience of the operator at Spadra, and my general knowledge of the effect of open shop operation, the violence that invariably resulted from open shop operation, attempts at open shop operation." (1440-41.)

Q. Did you call that condition to the attention of your attorneys and ask their advice as to how it would be legally possible to obtain protection of the Federal Court, and if you did state the substance of that conversation? A. They told me I could apply for an injunction if any trouble took place, if the companies applying for the injunction were foreign corporations.

Q. What do you mean by foreign corporations? A. Companies incorporated in some state other than Arkansas.

Q. What company did you intend to start your operation at? A. Prairie Creek No. 4.

Q. What state was that company operating that mine incorporated in? A. Arkansas.

Q. What did you do in pursuance of Judge Reed's advice? A. I made an operating lease between the Prairie Creek and the Mammoth Vein Coal Mining Company.

Q. What state was the Mammoth Vein Coal Mining Company incorporated in? A. West Virginia.

Q. What company operated the property during this trouble? A. The Mammoth Vein Coal Mining Company.

Q. That company subsequently applied for and secured the Federal protection of the United States Marshals? A. Yes, sir, the Mammoth Vein Coal Mining Company.

Q. What states were the Coronado and Hartford Coal Companies incorporated in? A. The Coronado Coal Company was a West Virginia corporation, and the Hartford Coal Company was an Oklahoma Corporation.

Q. Did you make any lease of those properties to the Mammoth Vein Coal Mining Company? A. I did not.

Q. You say you leased the property of the Mammoth Vein Coal Company, to the Mammoth Vein Coal Mining Company? A. I didn't say so, but I did lease it.

Q. What state was the Mammoth Vein Coal Company incorporated in? A. Arkansas" (1439-40).

Cross Examination.

"Q. This Mammoth Vein Coal Mining Company was organized in West Virginia? A. It was a West Virginia corporation.

Q. And you came to the conclusion that if you could turn these operations at No. 4. Prairie Creek over to a West Virginia company, you might with better success and more plausibility violate the scale contract the Prairie Creek Mining Company and the Mammoth Vein Coal Company had with the union,

and in the event of trouble you could have the protection of the Federal Court. Is that right? A. If you will separate your questions, I will be able to answer it. I did it entirely, for the purpose of getting the protection of the Federal Court, and for no other reason.

Q. It did not enter into your mind that you had an outstanding contract between the Prairie Creek Coal Mining Company, the Mammoth Vein Coal Company, and the local union, and you wanted a new contract, so they could not say that you had violated the old contract. Is that right? A. I didn't ask for a new contract. I didn't want a new contract. **The contract we had been operating under had been obtained by bribery, had been broken and violated time and again.** I regarded it as a dirty, filthy concern that did not exist, was void. It was not in my thought at the time.

Q. You had no respect for it? A. None whatever, deservedly.

Q. That was not one of your motives? A. Absolutely not.

Q. To turn over your leasehold operations to get away from the contract you had made with the union. A. Absolutely not" (1504-1505).

McNAMARA:—

"Q. What company operated Prairie Creek No. 4 mine? A. The Bache-Denman Company.

Q. Did you ever know of any other Company operating it? A. No, sir.

Q. What company operated Mammoth Vein No. 1 mine? A. Bache-Denman.

Q. Did you ever know of any other company operating it? A. No, sir.

Q. Did you ever hear it discussed that any other company operated it? A. I did not.

Q. What company operated the Hartford mine? A. Hartford Central mine?

Q. Yes, the Hartford mine. What do you call the Hartford mine? A. Mammoth Vein?

Q. No, no the Hoffman mine. A. The Hoffman mine?

Q. Yes, what do you call that? A. I believe that was called No. 7.

Q. No. 7 what? A. No. 7 Central.

Q. Do you know what company operated the Dallas mine? A. No, sir, I don't.

Q. Do you know what Company operated the Coronado mine? A. No, sir, I don't, not at the time I didn't.

Q. Did you ever hear of the Coronado mine by that name, that you remember? A. I don't think I did. I don't recall it if I did. You see, I didn't pay much attention to that stuff over at Huntington. I was in Hartford all the time.

Q. Did you ever hear any discussion about which companies of the Bache organization owned and operated which mines? A. No, sir, I didn't." (964.)

No cross examination on this subject.

Alleged "Evictions."

It is believed that this Court's impression as to the evictions was obtained from the Articles in the United Mine Workers' Journal, which plaintiffs offered to prove the falsity of the statements therein, as part of the conspiracy.[55]

No witness testified at the first or at the second trial that he had been evicted. While there was testimony that one family was living in a tent (2053), it does not appear that this was not from choice, during the very hot weather.

"Evictions."

BACHE:—

(In hiring the men) "I told the men that were going to work for us, the miners, that we were going to operate open shop. * * * (1441.)

[55]See for instance 1040, 1041, quoted *infra*, p. 129a.

I announced we would take every man that had worked for us, all the union men into our employ on that basis, open shop.

Q. What company houses did you have down there? A. We had 50 or 100 in the two camps, Nos. 3 and 4.

No. 3 Camp lay a quarter of a mile to the southeast of No. 4, this mine here.

No. 4 lay about three quarters of a mile northwest.

I sent out notices to the men occupying houses, (at No. 3 camp) some of them at No. 3, advising them that we wanted possession of the houses and telling them that we had vacant houses near Midland, about four or five miles away and they could move up there at our expense, and could live in those houses at Midland free of rent, and if anyone was sick they could stay where they were until they got well.

Q. Was there any time during this trouble when your former employees, union miners, were evicted from their houses and compelled to live in tents? A. Not once.

Q. Not one miner? A. No. sir." (1441-1442.)

THAREL:—

"Q. Did you hear them discuss the houses, the Bache houses and what was being done with them, during that open shop time? A. Yes, sir.

Q. What did you hear them say about that? A. I heard them say that the Bache-Denman Company had taken some of the Union men and moved them from one camp to another, in order to make room for the non-union miners, something to that effect.

Q. Did you ever hear anybody talking about the Bache-Denman employees, the union miners, being put out of their houses and not having any place to live? A. No, sir." (1016.)

Alleged Bitterness Against Strangers.

The testimony on this feature is circumstantial. In the new record it appears that the only professional guards originally employed by plaintiffs were the four Burns men, who were so badly beaten up by defend-

ants on April 6th that they left the property and never returned. There is no testimony in the present record that at any subsequent time there was one professional guard or detective on the property.[57]

The only workmen who could be classed as strangers were about a dozen miners whom plaintiffs brought from Tennessee. These men with their wives and children were captured by the Union men during the forenoon of July 17th, taken to Union Headquarters at Hartford and the next day[58] sent home to Tennessee at the expense of defendants. No bitterness was apparently shown toward them.[59]

"Reduction in Wages."

BACHE:—

"Q. If you had been permitted to get your mine going open shop in 1914, would you have made a general decrease in wages? A. No.

Q. Why not? Make your answer snappy. A. Because a general reduction of wages would not make it possible for me to get the efficient men that I desired in open shop operation.

Q. What kind of an adjustment in wages would have, in your opinion, materially decreased the cost of production at that time, under open shop conditions as distinguished from union conditions? A. I intended to increase the wages of those men who do skilled work, and for those men who do unskilled work I intended to pay less wages, and get men from

[57]See 1443, 1506, 1510; among defendants' witnesses were a number of plaintiffs' open shop employees, all of whom were local coal miners and none of whom mentioned the presence on the property of any other class of workmen; see 2217, 2220, 2104.

[58]590, 601-4, 809, 561.

[59]While at Hartford, Charlie Pattie (an employee of plaintiffs' competitor, Bolen, Darnell Co.) one of the local leaders in the attack against plaintiffs (947) told one of the Tennessee men that the Union men proposed next to visit the open shop operation of the Pennsylvania Mining Company at Jamestown (591). This visit formed the basis of the suit in United Mine Workers *vs.* Pennsylvania Mining Company, 300 Fed. 965, another step in the same nation-wide conspiracy, conducted for the same unlawful purpose and by the same unlawful means.

outside of the mine men who were working on the railroad tracks and that kind of thing. The work of a mine as conducted in a union mine is partly skilled and partly unskilled work. The large part of a miner's work is shoveling coal from the mine into a pit car.

THE COURT:—Very well. Let us stop at that.

MR. DRINKER:—This, if your Honor, please, is very important and it won't take but a minute.

THE COURT:—Ask your question and let him answer it.

Q. What adjustment were you going to make or what kind of an adjustment did you consider as proper to reduce your cost?

THE COURT:—He said that he intended to reward those who were skilled by an increased wage and would hire unskilled men for unskilled work. What more could he say?

Q. Did you finish answering that question? A. I don't remember.

MR. DRINKER:—I would very much appreciate it, if your Honor please, if this witness, who is our principal witness, could be allowed to tell his story. It will not take very long. I will try my best to hurry, your Honor, if I may be permitted to go on.

THE COURT:—It is not so much a question of hurry, as to get matters in some concrete shape. Mere speculations and opinions don't help.

A. I explained that the labor of a miner under union conditions was partly skilled but chiefly unskilled, and I proposed, instead of having one man mix up the different kinds of work to divide it so one man would do nothing but skilled work and another man do nothing but unskilled work.

Q. What was the proportion of skilled and unskilled? A. About one fourth skilled and three fourths unskilled." (1421-1423.)

See also the testimony of Mr. McAuliffe quoted, *supra,* p. 84a.

See further the suggested wage scale specified in Superintendent Cameron's letter to Mr. Bache (1503) and compare it to the current Union scale (1477-8).

Preparation Against Violence.

"Q. What experience of yours, or information other than what you have detailed led you to anticipate trouble, or otherwise, in connection with your open shop operations, very briefly? A. The experience at our own mine in 1910 and the experience of the operator at Spadra, and my general knowledge of the effect of open shop operation, the violence that invariably resulted from open shop operation, attempts at open shop operation.

Q. Did you attempt to hire men to go to this open shop operation? A. Yes, sir.

Q. Did they ask for protection? A. Yes, sir.

Q. How many of them? A. Three or four of them." (1440-1441.)

McNAMARA:—

"Q. Now, did the fact that Mr. Bache had made some preparations down there in April to put guards down there and wires around, did that have anything to do with inducing the miners to attack him? A. No, sir, it did not.

Q. They would have attacked him just as quickly if there hadn't been any defense there? A. Yes, sir. We were just waiting for the time to attack him, when he started hoisting coal.

Q. What was the circumstance that you were watching for to start the battle of July 17th? A. When he started shipping coal." (964-5; see also 2166.)

Additional Animadversions Against Mr. Bache.

Mr. Bache denied that he dictated the letter written to him by Superintendent Cameron (1500-3). While Cameron testified that Mr. Bache practically dictated the substance of it (1992, see cross-examination) plaintiffs were entitled to the assumption that the jury would find for their version. The identical testimony was in the original record.

On page 407 of the opinion this Court said:—

"In 1910, Bache, as a Union operator, took part for his mines in fixing the scale of wages in District 21. Later on, at the time of a conference, he made a separate scale with District No. 21 more favorable in some respects that that subsequently agreed on in the conference with the other operators, and he was for that reason expelled from the Operators' Association. He was permitted at a later time to rejoin it, but he had some litigation with it in respect to their funds, the nature of which is not disclosed by the record."

These matters were all cleared up by uncontradicted new testimony in the present record:—

"Q. Now, coming back to where we left off yesterday,[60] you testified at the close of yesterday that in 1910 you made an attempt to start open shop. After that did you sign a separate contract with District 21? A. Yes, sir.

Q. State very briefly the circumstances which led to that open shop attempt and to the signing of that contract? A. At the joint conventions of operators and miners in 1906 and 1908, and also at meetings of the operators themselves, I had endeavored to get eliminated certain inequalities of conditions in the mine operation, especially the matter of two men in a room, which put us at a disadvantage with our competitors, but did not get anywhere with that. In 1910, after the operators and miners had met and failed to agree on a new contract, the operators then agreed between themselves that they would all of them go on the open shop basis. The miners throughout the Southwest remained on strike and the mines were shut down without any effort being made to operate them open shop or otherwise until some

[60]Q. In 1910 you made an attempt to run open shop, did you?
A. Yes, sir.
Q. Just briefly, what happened?
A. We put some men to work in a strip mine near one of the mines near Hartford and they worked one day, I believe, and they were driven out by a party of several hundred men, scared off (1424-5).

time in August of that year. Then I started one of my mines open shop with the result that I testified to yesterday.

Q. Did any of the others start? A. None of the other operators made any attempt to operate open shop, and I received no support from the other operators. I learned that the other operators had started to re-open negotiations with the union, and being offered by President Stewart of the union a contract for the operation of our mines which took care of the inequalities of which I had complained, and in which I conceded the general advance, which the union asked for, I resigned from the operators' association and immediately signed up a contract.

Q. Immediately after resigning? A. After resigning, the same day." (1435.)

* * * * * * *

"Q. Mr. Bache, after you signed up, what did the other operators do? A. They signed up in two or three weeks." (1437.)

The contract which Mr. Bache signed is reproduced on page 1435 of the record and does not, as the Court supposed, contain more favorable terms than that accorded the other operators. On the contrary, its purpose was to eliminate the preexisting inequalities in their favor.

Clause (*d*) provides as follows:—

"(*d*) after such time as the Central Coal & Coke Company and the United Mine Workers of America reach an agreement, the operators shall have the right to work two men in each room of the mines above mentioned, viz: Prairie Creek Mines Nos. three (3) and four (4) and Mammoth Vein No. One (1) if the Central Coal & Coke Company work two men in any of the rooms in any of its mines near Huntington."

Under clause (*f*) plaintiffs were to have the benefit of any other advantageous conditions accorded the other operators by the contract with the Operators' Associa-

tion, which Stewart hoped to force them to sign by getting Mr. Bache signed up. See also as to the actual effect of the latter, p. 1798, quoted, *infra*, p. .

The "litigation over the funds," to which the Court refers, was a suit by Mr. Bache against the Southwest Operators' Association, and its President (who, it will be remembered, was President of the Central Coal & Coke Company, Mr. Bache's principal competitor) for an accounting of its funds. The hearings of this suit were attended by President White, Stewart, Mullen, Holt and the entire District Board. The testimony in this litigation revealed the fact that $20,000 had been paid to one Hazen to bribe Holt, the District 21 Secretary-Treasurer, and Howat, the President of the Kansas District, in connection with the 1912-1914 contract,[61] which contract preserved to the Central Company the discriminatory advantages so oppressive to Bache.

It was when Mr. Bache "secured this information" (as stated by National President White to his Executive Board, on May 4th), that he determined to start his mines open shop.[62]

---

[61]White, 2114; McLachlan, 2152-3; Bache, 1445, 1505.

[62]983-4.

See this speech as quoted by the Court (pp. 393-4 of opinion). The Court was not apprised, however, by the testimony in the previous Record, as to the nature of the information, secured by Mr. Bache, and so stated later in the opinion. In the first trial we did not regard it necessary to go fully into Mr. Bache's reasons for regarding the contract as invalid and no longer existing.

APPENDIX B.

Tabulation of Reasons Given by Expert Witnesses for the Lower Cost of Production of Open Shop Coal.

The expert witnesses on the present trial specified the following reasons for their opinion that Union shop mine operated in 1914 in the Hartford Valley at an operating cost of $1.75 per ton could have reduced this cost by 50-80 cents per ton[1] by running under open shop:—

1. It frequently happens that no railroad cars are on hand at the precise hour when a mine is supposed to start work. In such a case under union operation the mine is laid idle,[2] even though the train despatcher may advise that cars are on the way and the operator so assures the union men.[3] The mine is idle the entire day even though cars may arrive within an hour or two,[4] or even within a half hour.[5]

Obviously all over-head expense such as mine foreman's wages, hoisting engineer's wages, etc., goes right on "without a pound of coal going out to bring in any revenue."[6]

Such was not the case before the union came into existence. Then "it was customary for the miners to wait and go down and get out coal until the cars were set, if they had assurance they would be there."[7]

2. Another cause of frequent shut downs of a mine under union conditions is the practice of laying mines

[1]See *supra*, pp. 83a-84a.
[2]Bache, (1415); Freeze (1111); see also Sec. 17 of Union agreement, p. 1470.
[3]Bache (1415).
[4]Freeze (1111).
[5]Bache (1415).
[6]Bache (1415).
[7]Freeze (1111).

idle[8] on the occasion of all funerals, regardless of the extent to which such funerals may concern the entire mine group.[9] This practice is contrary to the express provision of the contract.[10] "There is no possible objection," Mr. Bache stated, "to people attending funerals of people they wish to attend but a mine is frequently shut down on account of a funeral to which practically none of the employees go. It is simply made an occasion for taking a holiday" (1415-6).

The present testimony shows that plaintiffs' mines were laid idle "six or seven times" during 1913 from this cause (1416).

3. On idle days, no matter how occasioned, union miners are not permitted to work,[11] although there is always work to be done preparing and getting coal ready, and even loading it into pit cars preliminary to its being hauled up to the mouth so that it can be shipped the first day the mine runs.[12] On the other hand, in open shop mines, preliminary work of this nature is regularly done on idle days.[13] This increases production,[14] with no increase in the fixed overhead,[15] which in turn decreases cost.[16]

---

[8]And, as already noted on the idle days there is no abatement of the overhead such as the foreman's and hoisting engineer's wages "and every other expense." Bache (1415).

[9]Bache (1415-6).

[10]Freeze (1112).

[11]Hanraty (496), Bache (1416), Freeze (1112). Witness Hanraty, former President of District 21, stated that under union conditions "none can work unless they all work" (496). See Art. XIV Sec. 6 of Constitution, p. 2211.

[12]Bache (1416).

[13]Hanraty (496), Bache (1416), Freeze (1112). The open shop miner "goes in the mine and shoots the coal and makes it ready, as they term it, so the next day they can load lots of coal." Hanraty (496).

[14]Bache (1416), Hanraty (496).

[15]Bache. "In an open shop mine the miner can go in there on an idle day and do that kind of work (preparation work), so that on the next day on which the mine ships coal, *the production will be larger, and you will get more coal out, although you are paying no more wages to your hoisting engineer or your monthly men and all that sort of expense for the larger production than for the smaller production.*" (1416).

[16]Hanraty (496).

4. The union rule that "none can work unless all are working" also retards the development work, which in a mine "is absolutely necessary to keep up the output."[17] In the open shop field the operator can get this development work done in the dull season, at the same time producing a small amount of coal either for sale or for consumption around the mine. Then in the busy season the operator is in a position to increase his working force, and hence his production, at which time, also, better prices are ordinarily obtainable for the coal.[18] "Under the union it is very difficult to * * * have development work done in dull seasons."[19]

5. Union operation calls for more men than does open shop operation.[20] "In many instances we have been compelled to hire men whose employment was entirely unnecessary.[21] This results largely from the fact that the union rules permit a man to do only one kind of work—"one job for one man."[22] "He cannot fill two jobs. On pumping, for instance, a pumper can do his work in two or three hours in the course of a shift. He is not allowed to do anything else, but must be paid for a full shift for work that only occupies two hours. Where shot firers are employed, he is only allowed to fire shots, which occupies from two to three hours of his time. He can't do any other work during the day.[23] * * * Likewise in drivers, and particularly

[17]Bache (1417).
[18]Bache (1417).
[19]Bache (1417).
[20]Bache (1418), Scholz (1776), Freeze (1353). "You have to have more men in union mining than in non-union mining, in that it takes more men to handle the same amount of coal." Freeze (1353).
[21]Operators' Reply to Union demands, as reported in Minutes, Southwest Joint Conference of United Mine Workers and Operators, April 12, 1912. (1536.)
[22]Bache (1418), Scholz (1776).
[23]"Their work (the shot firers) amounts to two or three hours a day. There is no reason why they should not stay in and pump the mines, attend the pumps. It does not amount to anything, watching the pumps, but their job is shot firing and that is all they will do." Bache (1418).

in construction work, the closed shop imposes a serious increase in cost upon the operator."[24]

6. Another factor that increases the cost of production under union operation is the arbitrary imposition upon the operator of what are termed "conditions."[25] The witnesses defined "conditions" as restrictions on the method of working the mine which have grown up by usage.

The agreement between the operators and miners contains the clause that the conditions as in effect at the date of the contract will govern.[26] In practice this provision has been interpreted only in favor of the miners. Conditions in their favor become automatically fixed after a comparatively short practice, whereas conditions in favor of operators are never adopted.[27] The longer an operator continues operating the more conditions he gets,[28] and once they become established they are permanent and cannot be eliminated.[29]

Conditions against the operator generally originate, according to witness Hanraty, with the "radical miner" and "a weak pit-boss or superintendent" who gives in to the former, and are promptly considered as established under the contract, thereby increasing "the cost

[24]Scholz (1776).

[25]Hanraty (498), Freeze (1112, 1359). The latter, for 3 years State Mine Inspector for Arkansas, also Commissioner for the Southwestern Coal Operators Association, and a former union member (1106-1107), defined "conditions" as the circumstance or situation in the mine, which "in the making of a contract remains intact." (1359.)

[26]Hanraty (498).

[27]Witness Hanraty, for 7 years President of District 21, afterward State Mine Inspector for the State of Oklahoma, a member of the Union since its inception, a National Organizer and on numerous occasions appointed Arbitrator in mine controversies, stated that he did not know of an instance where a condition in favor of the company had become a part of the contract, whereas he knew of "many" conditions favorable to the union which were permanently fixed upon the operators (498-9).

[28]Hanraty (499).

[29]Hanraty (499).

to that particular mine" (498). "Many arbitrary conditions and expenses have been imposed on us in violation of the contracts * * * which have largely caused the great increase in the cost of our coal."[30]

The strongest example of a "condition" which directly increases cost, and which has particular application to the instant case, is the matter of the number of men permitted to work in a room. All but one of the mines of the Bache-Denman Company were allowed under union operation only one man in a room, whereas its principal rival, the Central Coal & Coke Company was allowed two, as a result of a motion passed at the Pittsburgh, Kansas, convention, where the first union contract was entered into, providing that conditions as then existing would apply for the future.[31]

The significance of this was very concisely described in the testimony of witness McAuliffe.[32] After describing a "room" as a place where the individual miner worked (or two miners, as the case may be),[33] and "entries" as being primarily to provide access, haulage space and ventilation to the rooms, the witness continued (1091):—

> "The major amount of coal always comes out of a room, in the 'room and pillar' system, such as is used in Sebastian County. The effect of spreading men out on the expense or cost of production, is very material,[34] due to the fact that you have to take

[30]Minutes Southwest Joint Conference Miners and Operators, April 12, 1912, from Reply of Operators to Union demands. (1535.)

[31]Hanraty (499).

[32]Formerly General Fuel Agent for the Frisco System (which included Sebastian County). During the war manager of the Fuel Conservation Section of the Railroad Administration and now President of the Union Pacific and Washington Union Coal Companies and Special Representative of the Union Pacific Railway (1081-2).

[33]Being a matter entirely dependent on the union contract (1090).

[34]On the former trial the witness Hilling testified that the elimination of this condition alone resulted in a saving in the cost of production of twenty cents per ton. It was this testimony to which the Supreme Court doubtless referred on the last page of the opinion.

care of the ventilation, drainage, roof, bottoms, and those things, of a much greater territory. * * * In substance, economical mining is best effected by concentrating the work in the smallest possible area. * * * You get cheaper production by concentration of men and haulage and ventilation and general mining maintenance than you can by spreading a given number of men and a given tonnage over a large area."

Being restricted to one man in a room "made the development work," on the part of plaintiffs, "greater for the same amount of miners." Freeze (1110).

There is also the effect on the mine's output itself. Two men in a room results in a "greater production for a day's work" than one man in a room, and under open shop, or non-union, there are invariably two men to a room, and sometimes three.[35]

Still other examples of "conditions," or restrictions[36] which have grown up to increase cost over open shop operation, are such as payment being required for draw slate and for water yardage.[37] Under open shop

[35]Hanraty (495).

[36]That the general restrictive character of the union contract was fully appreciated by the rank and file of the miners appears from the testimony of Dr. Routh who testified to the gist of the conversations which took place on the part of the union miners during the Bache-Denman open shop attempt. Adhering "strictly to the union contract" would cause union mines "to be working at a loss," and with an open shop mine producing cheaper coal in their midst, these union mines would have to start open shop or shut down." "If they (the union mines) were forced to operate under the existing contract they could not sell coal as cheap as Bache-Denman—they would operate at a loss." (843.)

[37]That this is no small item, and that the rank and file of the miners themselves appreciated this union handicap, is eloquently disclosed by the following testimony on the part of F. J. Holloman, Section Foreman of the Midland Valley Railroad: "Q. Did you hear discussion, when Bache-Denman was just going to start open shop by union miners as to why they understood he was doing it? A. Yes, sir, I heard quite a bit along that line. Q. State that. A. The miners seemed to think they are going to start open shop because they could not compete with the Central and other mines, which I can't recall their names

or non-union operation the cost per ton does not include payment for either item.[38]

Also the handling of cars within the mine is different under the two systems. "The miner takes his car and pushes it to the face in other places (open shop fields), while we have to haul it there."[39] Under open shop or non-union, "the miners push their cars both ways."[40]

7. Another hindrance to efficient operation results from the provision in the union contract leaving slope development work to local settlement at each individual mine.[41] If the miners demanded a figure which was too high to enable the operator to make a profit, this halted development forthwith.[42] "You could not develop your mine any further as far as the slope went."[43] This happened at two of the principal Bache-Denman mines.[44] The Company "did not think it would pay to open the mine and pay that price for slope," particularly since the price in question would immediately become a part of the contract.[45]

8. Under open shop or non-union operation the operator is free to have a mine foreman who is primarily conversant with the practical operation of a coal mine. Under union operation, because of the contract, and

now. Q. Did they say why they couldn't? A. Yes, sir. Some of the union men told me why they couldn't, that Bache-Denman paid more water time, as they called it, and yardage and dead work than the other mines. One man in particular told me he got $20 a week water time. I asked him what he meant, and he said where you get your feet wet in the water." (1011-2.)

[38]Hanraty (495).

[39]Extract, Minutes, Southwest Joint Convention, Miners and Operators, July 13, 1903, remarks of Scholz, Operator. (1557.)

[40]Hanraty (495).

[41]Bache (1417-8), Freeze (1110-1111).

[42]Bache (1417-8).

[43]Bache (1418).

[44]Bache (1418).

[45]Freeze (1111).

particularly its peculiar nature, the mine foreman must be a "specialist" in the contract and be able to administer it in settling labor troubles.[46]

The contract between the miners and operators, at the outset a small pamphlet, "has been expanded * * * by decisions of arbitrators and commissioners * * * to enormous proportions.[47] * * * It was more important to have a mine foreman who knew the contract and could keep away from conditions being put on you that would add to your cost, than to have a mine foreman that knew how to operate a coal mine in other particulars."[48]

This situation seriously affects the efficient operation of a mine. The Foreman and Superintendent have to devote a large amount of time to labor troubles, both at the mine, the office, and wherever the district trial of the case may be held, and all this interferes with the management of the mine itself.[49]

9. Union operation, unlike open shop, makes it expensive to change from one system of mining to another.[50] "In the operation of a coal mine you may start off with one system of mining. * * * You may find you have made a mistake, and the way you started off was wrong and you want to start off according to another system. You may want to change from the 'room and pillar' system to the 'panel' system or even the 'long wall' system. Under the rigid conditions of the union contract it is exceedingly difficult, if not almost impossible, to change from one system of mining to another. As soon as you undertake to make that change your miners will say that is a new condition coming

[46]Bache (1419), Freeze (1354).
[47]By 1913 the "contract" had become so voluminous as to fill "three big books," each "about two inches thick."—Freeze (1354).
[48]Bache (1419).
[49]Freeze (1355).
[50]Bache (1418), Freeze (1113).

in there, and that opens up the whole business,[51] and they demand pay on a scale so high that you simply decide you had better not adopt the new system you intended to use and keep on mining as you have been under a system which is costly and disadvantageous to the operator."[52]

10. A further item "that enters into the cost very materially" is the matter of the control or management of the mine property and the discipline of the men.[53]

One way in which the cost of operation is affected is in the direct relationship of the powder charge to the sale price of the mined coal. "Owing to the lack of discipline, the difficulty in having men disciplined or discharged, it is very difficult indeed to limit the amount of explosives used in shooting down the coal, which is very detrimental to the operator, because he gets two or three or four times as much for his lump coal as he gets for his screened coal, the stuff that goes through the holes in the screen. The larger amount of explosives used the more the coal is shot up, and the smaller amount of lump he gets, the larger amount of cheap coal he will have to sell at a lower price. The miner gets along easier by putting a big shot in. It shoots the coal up and he has less picking down to do, and it is easier for him, but it is very costly for the operator, and under union conditions it is exceedingly difficult to control that situation."[54]

Another way in which this lack of discipline affects cost is in connection with the question of accidents. "By practically depriving us of all authority in the management of our properties, you have brought about an almost total lack of necessary discipline to such a

[51]"You can not change your system of mining without making another contract."—Freeze (1113).
[52]Bache (1418).
[53]McAuliffe (1103).
[54]Bache (1417).

degree that mining in this section has become a much more hazardous occupation than formerly with numerous accidents and fatalities, for which the courts hold us legally responsible and assess against us heavy damages, and these same dangerous conditions prevent us at times from getting sufficient miners to operate our properties."[55]

11. Under union operation it is not practical to reward and promote efficient company men as an open shop operator is free to do.[56] This results from the fact that when an individual's wages are increased, that wage becomes a fixed "condition" and attaches to that particular employment for the future, "no matter how inefficient his successor at some future time might be."[57]

Under union conditions the miners receive the "same price regardless of their efficiency, because the price is set at a convention in which union labor gets the same,[58] whether he is efficient or a poor man."[59] "You

[55]Minutes, Southwest Joint Convention, Miners and Operators, April 12, 1912, extract from Operators' Reply to miners' demands. (1536.)

In this connection, Dr. Routh, who because of his extensive medical services for the Central Coal & Coke Company, was in a favorable position to be well informed on mining matters, testified as follows: "Under that contract (union contract) as I understand it * * * they had a great deal of trouble and some accidents with inexperienced men and foreigners in the mine, accidents which were very expensive, from the inexperience of the workmen, and they could have gotten rid of these men and thrown them out of a job and put experienced men in their places if they had been running open shop with no restrictions on them."

[56]Bache (1414, 1419), Freeze (1354).

[57]Bache (1419).

[58]This hard and fast situation when coupled with Mr. Bache's testimony, given in another connection (1422) brings out a further point which could be mentioned. Mr. Bache intended, under open shop, to pay the one-fourth which is skilled labor even better than union skilled labor was receiving whereas the three-fourths which is not skilled were to receive common labor wages—a plan which would have effected a saving. Under open shop an operator is free to effect such an economy, whereas the union operator has no choice except to pay a uniform scale.

[59]Freeze (1354).

bring the inferior man up, and the superior down; strike a level, in other words."[60]

12. A further factor peculiar to union operation and affecting cost of operation is the constant friction and trouble between the operator and the men.[61] In fact, Mr. Bache testified that "the absolute impossibility of having friendly relations with the men working for you" was the most important factor of all (1414), and that "under the closed shop the feeling of antagonism is encouraged by the union."[62]

Witness Freeze said (1355):—"Under unionism there is warfare of course between the management and the miners continuously about the condition of the mine, and pay for the different deficient work."[63]

13. The cost of operation is also affected under union conditions because of the prejudice and antagonism of the union to mining machinery. There was great difficulty in getting a scale under which it would be practical to put in operation machines distinctly advantageous to the operator.[64]

14. Union operation makes impossible a certain system of close supervision which is possible under open shop operation. Non-union companies lease entries to practical miners who operate them and exercise direct supervision. Under this system there are three or four superintendents instead of one, who, because of their constant supervision, "get coal cheaper than any other system known."[65]

---

[60]Freeze (1354).

[61]Bache (1414), Freeze (1355).

[62]Bache (1414-5).

[63]Also, Dr. Routh testified: "The union miners wanted to work so many hours at a certain price and that was the thing that caused a great deal of trouble. There was a lot of discussion over dead work." (846.)

[64]Bache (1416).

[65]Hanraty (497); this system is prohibited by the Union Constitution, see Art. XIV, Sec. 8, p. 2212.

15. Finally, the matter of strikes has a very important bearing on the cost of production.[66] Strikes occur "very often" in union mines, and are "very expensive."[67] They do not occur often in a non-union mine—in fact, "I never knew a strike in an open shop mine unless there were union men connected with it."[68]

The matter of wages alone is not of primary consideration. "Continuity of operation, ability to operate continuously, is above and beyond wages" (1045) "I think that discipline and continuity of operation are worth more to the operator of coal in dollars and cents per ton of his production than any reduction he can effect in the day wage."[69]

---

[66]Hanraty (497-8), "Continuity of operation," McAuliffe (1096).
[67]Hanraty (498).
[68]Hanraty (498).
In connection with this point, the Report of President Stewart to the 1914 Convention of District 21, is eloquent proof of the frequency of strikes. In addition to a number of authorized strikes regularly called by the District President, there were strikes in violation of the contract where "our members have closed the mines down, without ever taking the case up with the district officials as provided for in the agreement." (1539.)
[69]McAuliffe (1096).

APPENDIX C.

Editorial and Articles Published in the United Mine Workers Official Journal.

1. *Journal Editorial Published by the National Board Pursuant to White's "Plan."*

Editorial appearing in the issue of July 23, the next after the Battle of July 17 (1041).

"The Truth About Hartford, Arkansas.

"Attempts on the part of the hired army of the Bache-Denman Company, New Hartford, Ark., to emulate the Colorado gunmen militia brought about an outbreak **on the part of the union miners,** in which the gunmen were badly worsted.

When the Bache-Denman broke with the organization and locked out the union miners, the organization in District 21 furnished tents for the miners who were evicted from the company's houses.

The tents were on private grounds, rented by the organization; were as much the property of the men who lived therein as is the mine tipple, the officers or any other of the buildings around the mine the property of the company.

More than that, the tents were, and are, the only shelter these men have—the only protection for their wives and children.

The operators recognize that these tent colonies indicate to any of the men they may bring in under false representations the fact that a strike is on. Many such men have turned back when they saw these tent homes.

For many weeks past the private army of the operators harassed the miners and their families in their tent homes. Night after night the tents were shot into from the surrounding woods. Men and women going from the tent colony on business of their own have been waylaid and beaten. Many of the men have gone out from the camp and never returned.

In fact the conditions surrounding the miners' camp indicated that a repetition of the Ludlow horror was the intent of the gunmen.

All night Thursday the tents of the miners had been the targets of the hired thugs. **Union miners living at a distance** heard of the attack. Determined that a massacre like that of Colorado should not be perpetrated upon their friends and relatives many men marched to the rescue. The sharpshooters were dislodged and followed to their camp; shots were exchanged all the way. *The miners then determined to destroy the enemies' stronghold as a matter of protection for their homes, the only shelter of their families.*

We do not advocate force as an argument. We would adjust all of our differences at the council table, if the choice was ours.[2] But when it is necessary to protect our homes, our families from the attacks of hired ruffians who do not spare, as we have learned too well, the mother or the babe, to whom murder and arson are 'all in the day's work,' **we applaud the men**—would be glad to personally aid the men who defend their homes, **even though it be necessary to follow their assailants to the shelter of the companies' buildings,** their rallying place, from which they come forth at night on their work of destruction.

There are no arguments we can offer to the hired gunmen of the company. Their work is to cast the bludgeon of force into the scales of reason.

We maintain, and those who have not been prejudiced by lying reports, and are not personally

[2]At the new trial McNamara testified that, *as part of every open shop campaign* practiced by them "all over the country" the Union officers saw to it that public utterance was given to their desire for peaceful methods, their abborrence of violence, and that the purpose of this was to "camouflage the public" in connection with the unlawful acts which they proposed to commit (944, 950; quoted, *supra*, pp. 52a-53a). Both National President White and District Board member McLachlan testified at the second trial that they knew of no case in the entire history of the organization, where the Union had taken any action whatever within the organization, to discipline, by fine, suspension, expulsion or otherwise, any member or officer for violence to persons or property in the course of a strike. White, 254-257; McLachlan, 2160-61. See also McNamara, 944.

interested, will agree that the men of Arkansas had a perfect right to protect their homes and their loved ones from a like fate as that which overtook the victims of greed and violence at the Ludlow tent colony."

It is submitted that the jury, in considering the foregoing Editorial, would be warranted in finding, from the new testimony in the record that the Executive Board, when it published the Editorial knew that the following were the true facts:—

That there was no hired army of gunmen and no professional "guards" at the Bache-Denman property, the men merely taking turn in standing guard to prevent the destruction of the property which defendants were anxious to effect with impunity; that the Union miners were not "locked out" or evicted from the Company's houses; that there was no tent colony on the property and no ground was "rented" by the organization for any purpose; that these employees of the plaintiff did not "harass" the miners or their wives or children or families in any way, nor did they "shoot into their tents or homes," or "waylay" or "beat" any of them; that the Union men did not really fear attacks from the "guards," and that the attack of July 17th was not made in defense of the homes of the miners but pursuant to the instructions of the National President of the Union in the furtherance of its objects.

White had given all the necessary directions which led to the destruction of the property. Aside from himself taking a gun and participating in the battle, the Executive Board could have furnished no better assistance to carry out his plan than the publication of this intentionally false account of the affair, intended and designed to draw public opinion away from the real parties responsible.

This publication would furnish additional ground, in connection with the other evidence in the case, for

the conclusion by the jury that the National Organization was a co-conspirator and that, in view of the knowledge of the publishers of the true facts, it fully ratified all that had been done.

From the decisions holding that, in order to constitute an effective ratification a principal must have knowledge of the true facts, it follows that if the principal really knows the facts and states his unqualified approval of his agents' action, giving, for ulterior reasons, a justification for what has been done which he himself knows is untrue, and which he states merely to serve his own ends and to relieve himself from responsibility, this amounts to an unqualified ratification on his part.

The above is a fair sample of the other Articles offered, which followed through the criminal prosecutions in January, 1915, and did not alter their tone even when all the defendants pleaded guilty. One of them certainly, and doubtless others, was written by Mrs. Johnson, Editor of the Hartford Observer (see 1514) who, as McNamara testified, was the Union publicity agent in the Prairie Creek Campaign, knew all the details and "was just as instrumental in it as any of us." (941-4.)

Other articles are found at pages 546, 1040, 982, 1043, 1512, 1515, 1517, 1519, 1520, of the present record.

2. *Article Published April 30, 1914, Describing Events in the Open Shop Campaign in Colorado.*

The following article, which appeared in the Journal of April 30, 1914 (1883, *et seq.*) is quoted as illustrative of those published during and immediately preceding the campaign against plaintiffs' attempted open shop operation.

For a discussion of the relevancy of such articles and their function in establishing the unlawful con-

spiracy see argument under Point II, subdivision 5 of our brief.

"Fighting Continues With Assault Made on Chandler.

"Seven persons said to have been killed.

Denver, Colo., April 26.

After an all-day battle, between union and non-union coal miners, the town of Chandler was captured tonight by 1,100 strikers, according to messages reaching the governor's office.

Seven men, including four mine guards, were said to have been killed in the battle. The casualties in the strikers' ranks are unknown.

Canon City is terrorized lest the combatants carry the fight into that town, which is only a few miles from the mine."

"J. W. Siple, Denver, president of the Southwestern Fuel Company, and twenty of his men are facing death tonight in the Empire mine as the result of their refusal to surrender to the strikers at Aguilar early this afternoon.

Three women, two children and two wounded men have been removed from the mine pit, preparatory to the resumption of the fighting.

A supply of air sufficient to last the captives about twelve hours remains in the mine, it is said. Unless aid reaches them by that time they will face the alternative of dying by suffocation or throwing themselves on the strikers' mercy.

Those who have been taken from the pit are William Waddell, mine superintendent, shot through the shoulder, his wife and Louis Waddell, their 13-year old son; Mather Waddell, mine clerk, and also Waddell's son, shot through the foot; the younger Waddell's wife, and their 9-months old daughter, and Mrs. John McIntyre, wife of the camp blacksmith.

J. W. Church, the mine's chief engineer, reported to have been killed in yesterday's fighting, is within the mine and safe. The only condition imposed by

the strikers was that the men should surrender their arms and accept safe conduct from the district.

The wounded men, women and children who accepted it were conducted to a place outside the danger zone, and, if, possible, will be placed on a train for Pueblo this morning.

At the Southwestern mine, which broke into flames early this afternoon, a battle is raging between guards and a strong force of strikers. The tipple and the camp have been destroyed, according to a report which reached here tonight, and the guards have been forced back into the mouth of the slope.

Firing all Along Canon.

The firing is spreading rapidly all along Green Canon, in which both the Empire and the Southwestern mines are located.

Virtually the whole strike zone is in a state of terror. *Should the troops fail in running the eighteenth-mile gauntlet spread for their reception more damage may be done to property.* Should the militia succeed, it is possible that the guerilla warfare will exist for weeks.

John Lawson, International Board Member of the United Mine Workers of America, announced definitely this afternoon that he would refuse to order the strikers to surrender their arms until they had been assured that they would receive fair treatment at the militia's hands. 'There can be no peace without justice,' he said.

Communication into the war district from Trinidad has been completely interrupted, and grave fears for persons on the mine company properties are entertained.

Enormous Loss is Feared.

The mines now known to be ablaze are the Primrose, of the Colorado Fuel and Iron Company; Mine No. 4 of the Southwestern Fuel Company; the Green Canon mine of the National Fuel Company, and the Rugby mine of the Colorado Fuel and Iron Company.

In addition to the Royal and Broadhead mines, both operated by independent companies, are in ashes.

Major Hamrock, at the Ludlow camp, announced late tonight that he was seriously contemplating the sending of at least a substantial proportion of his force in the direction of Aguilar, so serious did he consider the situation there.

Aguilar is Fight Center.

The storm center of the trouble virtually shifted today to Aguilar, and the liberation of the three women and five children from the pit of the Empire mine marked the first cessation in the fighting in more than twenty-eight hours. According to the reports of the trouble which have reached Trinidad, the shooting commenced at about 9 o'clock yesterday morning, when the strikers began to pour shots into the camp from the surrounding hills.

In anticipation of trouble, the women and children, under the direction of President Siple, and the other mine officers, had been removed to the tipple, about which the fight immediately centered.

Fire in the houses of the camp broke out almost immediately and, fanned by a light breeze, spread rapidly. The firing meanwhile redoubled and the shots ripped through the tipple house until it soon became untenable. The women are crowding in the slope, the entrance which Siple and his companions attempted to hold.

Three Strikers Killed.

In the fighting before the entrance of the drift, three strikers, J. P. Gomez, Ben Vigil and Nick Schumich, were killed and a mine guard either killed or wounded.

The force of strikers about the entrance to the mine grew rapidly in number, but it was the spread of the flames to the tipple house which finally drove its defenders to abandon it, and retreat further into the mine. A few moments later the strikers, according to R. D. Kink, one of the mine owners, who witnessed the engagement from his residence, a quarter of a mile away, effectively closed the entrance with dyna-

mite. Shortly thereafter the wrecking of the fan cut off the circulation of air through the workings and the air shaft was blocked.

Communication Cut Off.

The flames, which spread through the camp until every building was ablaze, cut off communication with the entombed persons until shortly afternoon.

It was then that E. N. Snyder, one of the Aguilar strike leaders, announced over the telephone to Trinidad that an effort to reach Siple and his companions for the purpose of liberating them from their hazardous position, provided they would surrender their arms, was to be made.

Snyder said tonight that Siple had refused the proposal of surrender, though he had intimated that he might change his mind. Snyder also said that personally he 'didn't care what he did.' 'The only quarter asked by Siple' he declared, 'was protection for the women and children.'

According to reports which have been received from the younger Waddell, he received his wound when he ventured from the mine slope, in which his father and the others were imprisoned, to recover a bank book which had been abandoned in his house.

While he was in the house the place was surrounded by strikers and he was taken prisoner. On his way to a boiler house, where he was to be detained, he was shot in the foot. His captors declared the affair was an accident. The elder Waddell received the bullet in the shoulder in attempting to go to his son's assistance. He succeeded in crawling back to the mouth of the slope into which he was drawn. None of those in the custody by the strikers complained last night of the treatment they had received.

The fighting this morning began shortly after 5 o'clock, when from the Empire property and the town of Aguilar the strikers' forces surged northward, carrying everything before them. Their numerical strength at various places was estimated at between 700 and 1200 men. For the most part little or no resistance was offered.

Primrose Property Fired.

The Primrose property, from which the women and children had been removed to Rouse during the night, was the first consigned to the flames. Before volleys from the hills its defenders fell back from building to building, until finally they were forced to flee to the hills.

A moment later the mine tipple and the other wooden structures were ablaze and at 9 o'clock reports of dynamite heard at Rouse gave evidence that the slope and probably the air shaft had been destroyed.

Strikers surged over the ridges next in the direction of Rugby, which was evacuated by the few men who remained with the buildings without a struggle. Shortly thereafter, according to report it also burst into flames.

Strikers Ready for Attack.

The strikers then marched on Rouse, which is still unattacked, according to the best information obtainable. The last message sent out by its superintendent before communication was cut off was directed to the Colorado Fuel and Iron Company's offices here.

'For God's sake, send help,' it read. Since Rouse forms the key to the mines at Lester, Cameron and Walson, it is feared that a determined effort to take it may be made.

At Cameron, as a precautionary measure, women and children have been placed in a concrete cellar, and similar steps have been taken to insure their protection at the other menaced points.

The last of the camps to report fear of attack were Primere and Segundo, operated by the Colorado Fuel and Iron Company. All the women from the strikers' Segundo tent colony have been removed, according to the superintendent's report, and a large party of armed men is visible on the hills. Neither of the camps could withstand a determined assault. Similar forces of men are visible on the height above Berwind and Tobasco in the immediate vicinity of

Ludlow, but no fear for their safety is entertained in view of the proximity of the militia men who occupy the Ludlow depot.

The Black Hills, held by the strikers, and Cedar Hill, on which the militia's machine guns are mounted, exchanged shots yesterday at long range, but no close fighting occurred. So far as is known no one was hurt."

"COLORADO OR MEXICO?

(By Adolph Germer.)

MOUNT OLIVE, ILL., Apr., 27

Where in darkest Russia have there been such horrifying crimes committed in the interest of capitalism and where has militarism run so mad as in the strike region of Colorado? Where on earth has the brutality of capitalism so fully unmasked itself as when the helpless women and innocent children of the strikers were unmercifully shot and burned to death by professional murderers, clad in a military uniform?

* * * * * * *

Were it within my power I should without hesitation recruit an army of several thousand men, with fearless hearts and keen eye, each one equipped with the best rifle that can be had and plenty of ammunition, and I would enjoy marching this army against Ammons, Chase and Linderfelt and drive these inhuman monsters to Hell, where they properly belong. If by some magic stroke I could this very moment put five thousand well-provided men into Colorado I would do it without equivocation, and I should finish what the brutes in uniform and high places have started.

I am not an advocate of violence, and have not lost faith in the power of the ballot, providing the enemy fights with the ballot. But when the enemy places guns in the hands of paid assassins, to wantonly slaughter the innocent, more than ballot is needed to rebuke the crime. If it means death, we had better die fighting for the right than be shot and burned to death without resentment. Let the slogan be, 'An eye for an eye, and a tooth for a tooth.'"

APPENDIX D.

CHRONOLOGY.

Organization of United Mine Workers. **1890**

First closed shop contract with operators in the Central Competitive Field—Illinois, Indiana, Ohio and Western Pennsylvania. Origin of the General Policy in the Chicago Agreement (193) by which, as interpreted by the parties in later conferences, the Mine Workers agreed to protect the Union operators from the competition of open shop mines in adjoining States by imposing on the latter the expensive Union conditions and restrictions.[1] **1898**

Adoption, development and recognition, as evidenced by discussions in Joint Conferences, Union Conventions and Journal Articles, of the basic General Policy to protect the Union Operators against the competition of the cheaper mined open shop coal.[2] **1898 1914**

Organization of District 21, then including Arkansas, Indian Territory, Texas, New Mexico and Colorado (491) (Later Colorado and New Mexico were made separate Districts). **1898**

Campaign by National body, by unlawful means, to unionize the open shop mines in the Irwin field, in Western Pennsylvania for the similar protection of the adjoining Union mines.[4] **1910-11**

Campaign by National body, by unlawful means, to unionize the open shop mines of West Virginia for the similar protection of the Union mines in the Central field.[5] **1912-13**

---

[1]See extracts quoted in Appendix A (*supra*, pp. 3a-8a).
[2]See extracts quoted in Appendix A (*supra*, pp. 8a-15a).
[4]See rejected offers 1837, *et seq.*
[5]See rejected offers 1853, *et seq.*

1913-14 Campaign by National body, by unlawful means, to unionize the open shop mines of Vancouver, B. C.[6]

1913-14 Campaign by National body, by unlawful means, to unionize the open shop mines of Colorado[7] for the similar protection of the mines in District 21 of the Southwest, by "raising the price" charged by the Colorado operators.[8] $10,000 and services of four organizers contributed by District 21.

1898 Bache and Denman acquire and develop their first mines in Indian Territory, operating open shop (1423).

1893-1902 District 21 endeavor to force the closed shop on these Bache-Denman mines, in the course of which Bache learns by experience that the only power feared by the Union men and the only adequate protection from acts of violence on their part is a Federal injunction (1438-9, 1440-1).

1903 Adoption of closed shop in District 21, covering mines in Arkansas, Oklahoma and Texas (491).

1903-6 Bache and Denman acquire their Arkansas properties already being operated by their former owners under the closed shop and "unwillingly" accept the latter (1423-4, 1456; see also 1797).

1900-14 Adoption and recognition by Stewart, Hanraty and the other District 21 officers of the General Policy, particularly in efforts to protect the Union operators in District 21 against open shop coal from Colorado.[9]

---

[6]See rejected offers 1844, *et seq.*

[7]See rejected offers 1873, *et seq.*

[8]See Hanraty testimony quoted in Appendix A (pp. 38a, 41a, 42a). "Whenever you fight a Federal Court in a strike, you are up against it" (1547). See also McNamara, p. 965: "As long as they had the United States Marshals there we didn't want to get into any trouble with them, because we realized what that meant. As soon as they was withdrawn and he began hoisting coal, that is when we made the attack on him."

[9]See extracts quoted in Appendix A (pp. 18a-45a).

Preparation and presentation to Union Miners of Scholz memorandum giving the reasons why the Union operators of District 21 and the Southwest could not continue the closed shop against the competition of the surrounding low cost open shop mines in surrounding states.[10]	**1910—February**
Suspended operation of all mines in District 21 by reason of failure to agree on a satsifactory Union contract (1434).	**1910—April-August**
Agreement among nine principal operators (including plaintiffs) to attempt operation open shop (1459-60).	**April**
Pursuant to the agreement plaintiffs start open shop mines attacked by a mob of 1500 Union men, employees intimidated and driven off. Open shop attempt abandoned (944-5, 1040, 1424-5).	**August**
The other operators refuse to perform the agreement to work open shop.	**August**
District President Stewart offers plaintiffs a separate contract eliminating discriminations[11] previously contained in favor of plaintiffs principal competitor (1434).	
Bache resigns from the Operators' Association and signs the separate contract (1435, 1459-60). This action on his part promptly forces all the other operators to sign up for fear of losing their markets and men to Bache (1798).	
Bache "expelled" from the Operators' Association, from which he had already resigned (1460).	**1910—August**
Stewart goes "flat back" on his agreement and reimposes on Bache the discriminating conditions favorable to the Central Coal & Coke Company (1445).	

[10] 1781-1792; see extracts quoted in Appendix A (pp. 22a-25a).

[11] See p. 1435 for the text of this contract which specifically provides that Bache receive the same terms as the other operators and not, as this Court thought, more favorable terms.

1910-12 At the request of the Operators' Association Bache rejoins it (1460).

1912 The new Union contract continues such discriminatory condition.

1912 National Secretary Treasurer Green and National Vice-President Hayes speak at the Biennial Convention of District 21, impressing on the members the vital necessity of protecting the Union Operators against open shop competition, and promising the full cooperation and support of the National body whenever needed (331-334).

1910-1914 Plaintiffs operate at an average net loss of 5 cents to 10 cents per ton due to open shop competition and to oppressive and discriminating Union restrictions (1437).

1914—January Plaintiffs' mines developed at a total cash expenditure of $500,000-600,000 (1508) with actual daily output of 5000 tons, but mining on short time due to inability to sell coal in competition with open shop and favored competitors.

Potential output 7500-8000 tons per day, second largest operation in Arkansas and able to equal the total annual tonnage mined in the entire State.[12]

1914—Feb. 17 Biennial Convention of District 21. Proceedings filled with speeches by the Union men, including participants in the attack on plaintiffs, showing intimate familiarity with competitive conditions throughout the District and with the essential importance of protecting the Union Operators with whom defendants had closed shop agreements, against the recognized menace of open shop competition.[13]

---

[12]See Appendix A, p. 77a for tabulation of output and capacity of each of the seven mines with full reference to the Record.

[13]See extracts Appendix A (pp. 31a-35a).

Court hearings in Kansas City of legal proceedings against the President of the Southwestern Operators Association (also President of Central Coal and Coke Company, plaintiffs' principal competitor) for an accounting of the funds of the Association.[14] **1914 February-April 15**

In the course of these proceedings Bache learns that a bribe of $10,000 had been given to District Secretary Holt and another Union officer in connection with the Union contract then in force.[14] **February**

On learning this Bache determines to consider possibility of attempt at operation open shop.[15]

Bache asks his Superintendent Cameron to write out his (Cameron's) views as to the possibility and result of open shop operation, for submission to his other stockholders.[16] In it Cameron sets out the proposed wage scale, a comparison of which with the current Union scale shows no proposed general wage reduction and an increase to skilled miners. The program shows a saving of 55.8 cents per ton (1501-1503) on operating cost proper, without including additional saving from reduced overhead due to increased tonnage. This saving was to be effected by removal of restrictive conditions and requiring skilled men to confine themselves to skilled work.[17]

Visit by Bache to open shop operation at Spadra (1437).

Determination to make the attempt as the only means of averting gradual but eventual insolvency.

---

[14]See White 2114, McLachlan 2152; as to Keith's efforts in 1910 to prevent the removal of the discriminatory clause see Stewart's report to the 1910 District 21 Convention (331). See also 1435, 1445, 1505.

[15]"When he secured this information he immediately went down to Arkansas and started to run his mine non-union"—President White to his Executive Board, May 4, 1914.

[16]Bache did not dictate this letter, 1498-1500. At the first trial Mr. Bache also testified that he did not dictate it. The impression of this Court was perhaps derived from the quotation by counsel for defendants, of Cameron's contradicted testimony, by which, in view of the verdict, he was not properly entitled to benefit.

[17]Compare Cameron's figures as to the wages proposed to be paid the open shop employees (1503) with those provided by the Union scale then in effect (1477-8).

1914 March

Preparation for open shop.

(1) Anticipating Union violence and despairing of local police protection,[18] Bache, on advice of counsel, and in order to secure Federal jurisdiction, leases his two Arkansas corporations to a West Virginia Company.[19]

(2) Secures four guards from the Burns Agency (1441). Supplies them with arms and ammunition and instructs them to use no violence except in defense of their lives (443-4).

(3) Connects the farm fences at each end of the property with wires to mark off the area to which the No Trespass Sign applies.[20] Clears away inflammable material and installs lights.

(4) Certain Union men who refused to continue at work open shop requested to move to other Company houses near by unless ill.[21] No Union man evicted, none

[18]1439, 953-4, 948, 1035 as to Little; see 259 U. S. at p. 400 as to total demoralization of the local police.

[19]1438-1440, 1504-5. No lease was made of the Coronado, that Company being itself a West Virginia corporation and requiring no lease to enable it to secure Federal protection.

[20]1444, 620, 2036.

The frequent reference to this enclosure as the "Stockade" and the "Bull Penn," both by the Union men and by their counsel, was merely a part of the regular Union propaganda, designed to convey the impression that plaintiffs' employees were kept at the mine against their will. While the testimony in the present case makes any such supposition here ridiculous, similar propaganda has, by its mere reiteration, been successfully used to deceive the public on many other occasions; see McNamara, 942-944, 948-950; Good and Carney offer, (1830-1837, 1852-1854).

[21]1442, 936-7, 1016.

No witness for defendants testified that any Union man had been evicted from any house or that there was any "tent colony" such as is customary in such strikes. The references in the Journal articles to the "tented colony" are merely part of the regular Union camouflage.

None of the above testimony as to the Company houses was in the former Record. The impression of this Court may have been based on the Journal Articles. See the Editorial "The Truth about Hartford" in the issue of July 23 (1041) which the present Record shows to be a deliberate series of lies from one end to the other (quoted, *supra*, p. 129a).

discharged. All welcome to stay at work,[22] but most refused because of Union rule prohibiting members from working with non-union men.[23] **1914**

No difficulty in securing employees when protected from violence by defendants.[24]

Bache receives a visit at his office in Fort Smith from District President Stewart, who warns Bache against the consequences of his proposed open shop attempt, stating that he "would have the whole force of the Union against him." Stewart acknowledged the repeated and continuous breaches of the Union contract by his men, including his agreement to remove the discriminatory clauses favoring the Central Coal and Coke Company.[25] **March 20-30**

McNamara (check weighman at No. 4 Central Coal & Coke Co., and Secretary of Local Union No. 1526 at Hartford), under the direction of President Stewart, **April 1-6**

[22] 1441.

Among defendants' witnesses were a number of plaintiffs' open shop employees, all of whom were coal miners and none a professional guard.

All defendants' talk about armed guards, both during the strike and in the course of the trial, was mere consciously false propaganda, designed to deceive the public and to mislead the jury.

The word "thug" and its synonym "armed guard" is, as it were, a technical term having a particular significance when used by Union men, and meaning "one who guards non-union property." It has nothing to do with the character, profession or reputation of the man referred to, and is applied equally to ministers and school teachers, regardless of their standing and behavior. The use of these terms, and the propaganda as to the "armed guards and thugs" is a regular part of the program of the United Mine Workers in all strikes "to camouflage the public." McNamara, pp. 949-950.

[23] 218.

[24] "After we got some protection—the marshals—we had absolutely no difficulty whatever, we were overwhelmed with applications for work." * * * "We had more men than we could use until we got the water out and were ready to dig coal"; 1453; see also 811, 812-3.

[25] 1444-5. Stewart did not take the stand to deny this conversation, although he was in Fort Smith throughout the trial (2230). He referred to it in a letter to his nephew and "assistant" Little Pete Stewart, a day or two before the Riot of April 6th (940).

1914 at meetings held for the purpose, marshals the Union men for the proposed demonstration against plaintiffs (939, 946).

April 4 Start open shop. Visit from Slankard, local constable and prominent Local Union Committeeman (445-7; 945).

April 6 First car of open shop coal ready for shipment (445).

April 6 The Riot of April 6.

(Details of this event which were included in the prior record and summarized by this Court are not here referred to in detail.)

Assembling of three detachments of Union men and sympathizers from Hartford, Huntingdon and Midland, as for a picnic. Speeches (as per prearranged plan) by McNamara, Mrs. Johnson (Editor of the Hartford Observer and Union Publicity Agent) deploring violence, the purpose of such speeches being to provide a moral alibi for the Union violence proposed.

Attack on the property, the guards offering no resistance, employees assaulted, fires pulled and pumps stopped. "Flag of United Mine Workers" placed on the tipple in token of Union victory.[26]

April 6 The four Burns men leave the property and never return. Thereafter no one but coal miners employed, they taking turns in guarding.[27]

---

[26]See new testimony of McNamara as to details of Union preparations, etc., not previously disclosed (936-41); also Tyler, 1306-7; Cole, 1368; Barnes, 442-450; Bailey, 690-4; McLaughlin, 653; Looper, 684-6.

During this attack John Manick and Ves Howard told Elmore Searle, plaintiffs' assistant engineer, whom they had just assaulted, that they were not going to permit the Company to work open shop because if they did the Central Coal & Coke Company would follow suit and thus effect their wages and working conditions. Searle, 895.

For details as to the Riot, the Court is referred to the testimony of the following witnesses: McNamara, 945-946; Barnes, 450; Bailey, 692; Looper, 684; Cheek, 417; Meeks, 1314; Sylsberry, 679; Caldwell, 541; Levi Brown, 607; Hackett, 338.

[27]1443, 1506, 1510; see also 2104.

Stewart, Holt, Mullen and McLachlan in Kansas City with National President White attending Court proceedings in connection with the bribery charges against Secretary Holt (2162). **1914 April 7**

Temporary injunction granted against defendants by Judge Trieber by reason of diverse citizenship of West Virginia operating company (1449). **April 8**

Stewart and Mullen come to Fort Smith on Union business (182, 1804). **April 8**

Stewart and Mullen return to Kansas City (182, 1804). **April 10**

Stewart and Mullen with White in Kansas City (2162; 182, 1804). **April 10-15**

Plaintiffs' employees (other than the Burns guards) return to the mines under protection of the injunction and proceed to pump out the accumulated water (1379). **April 15**

State Labor Commissioner Clary, at the dictation of the Union, summons plaintiffs' men to a "hearing" at Hartford, a 100 per cent. Union town near by. In fear of violence they abandon the mines and return to Fort Smith. The water again accumulates (948, 1379-80). **May 1**

National President White describes to his Executive Board the Riot of April 6, mentioning the assault on plaintiffs' men, the placing of the Union emblem on the tipple, and the attainment of the desired result in the fact "that the mines have been idle in there ever since" (984). **May 4**

After hearing, injunction made permanent by Judge Youmans. **May 4-8**

During the hearings McNamara, who from April to July 17, was continuously in close touch with Stewart, visits Stewart in Fort Smith, where Stewart tells him

1914 that at Kansas City White and Stewart had (arranged a plan" to stop plaintiffs' open shop operation (950).

May 10 Plaintiffs' employees return and resume pumping under the direct protection of Federal Marshalls (1447-8).

May 18-23 Convention of District 21 to try Secretary Holt on the bribery charges, resulting in his acquittal by his fellow Unionists.[28] Attended by Stewart, McLachlan, Holt, etc., and also by President White, who remains the entire week.[29]

May 18 White makes an address to the Convention, denouncing the "guards" at the open shop mines and stressing the importance of protecting Union operators against open shop competition (984-993, 953).

May 19 White sends for McNamara and Slankard, states his familiarity with the conditions at Prairie Creek; refers to his meeting with Stewart; gives as the sole reason why the Union must not permit plaintiffs' open shop operation the competitive menace of the open shop operators; promises them compensation for their services; fixes the plaintiffs' readiness to hoist coal as the signal for them "to act" and directs them to spread this direction with the reasons given among the Union, but without implicating White or the National body.[30]

Monday May 25 Stewart with County Prosecutor Little[31] makes a trip through the Hartford Valley, Stewart making speeches

[28]953, 2115, 2117, 2162; Holt resigned a few months later.

[29]White swore that during the entire week he did not discuss with any one or hear mentioned the Bache-Denman open shop operation near-by. He did not merely say he did not remember hearing of it but that he was sure it had not been discussed (2116). He also swore that he did not know of the injunction (2121).

[30]950-2, 953, 968-972; see quotations, Appendix A (pp. 46a-54a).

[31]Paul Little was the County Prosecuting Officer whom the Union had agreed to have elected judge in consideration of his assistance in carrying out this conspiracy (953-4).

denouncing the imaginary Colorado guards at plaintiffs' mines and promising guns to all who want them.[32] **1914**

At Hartford (the former record covered only his speech at Midland) Stewart said that, "if it was necessary, he would sacrifice his own life to prevent Bache getting coal out of there" (954).

Stewart meets Marshall Johnson and without recognizing him says "Damn the injunction. The National Government is against us, but the people are with us and we are going to win" (785). **May 25-30**

McNamara and Slankard, personally and through their subordinates, spread White's message throughout the Hartford Valley (952, 971). **May 25-July 17**

Continuous insults, intimidations and assaults against plaintiffs' employees, present and prospective, by defendants, and attempts, directed by Stewart, to prevent plaintiffs securing men to work their mines.[33] **May 8-July 17**

Acquisition by Secretary Holt of 300—400 high powered rifles and ammunition.[34] **June 1-10**

Continuous discussions in Midland, Hartford and Huntingdon, the three towns surrounding Prairie Creek, not only by plaintiffs' former employees, but principally by the Union miners working for plaintiffs' competitors, of the menace to the Union from the prospective shipment of plaintiffs' low cost open shop coal to the named interstate markets of plaintiffs' Union operated competitors.[35] **June-July**

---

[32]Note also Stewart's reference to "another Colorado," evidently the direct influence of White's speech and intended to connect it directly with the local situation in the minds of the local delegates who had heard it. (954, 747-8, 749-751, 764.)

[33]947, 967, 812, 567, 419, 544, 1372, 1312, 752, 1379, 785-8, 611-615.

[34]954-5, 913, 1067, 1062, 706; see especially 712, 1071; see check of District 21 in payment for part of the rifles, pp. 917-8, 1070, 1939-40.

[35]See quotations, Appendix A (pp. 54a-67a).

1914 July Attempted intimidation by Union men of railroad repair gang working on switch track leading from plaintiffs' mines directly and solely to interstate markets.[36]

1910—July 1914 Publication by National Executive Board in United Mine Workers Journal and circulation among entire membership of articles inciting members to violence against open shop operators and employees, describing, without disapproval or attempted justification other than necessity, numerous unlawful acts of violence by Union men in connection with open shop campaigns then conducted by the National body, the most flagrant articles being in April and May 1914.[37]

July 9 Publication in the Journal of an article falsely representing that the Union men had been evicted from their houses by plaintiffs, and that plaintiffs had imported "gun men from Colorado" (1041).

July 1-17 Union preparations for the attack.

McNamara and his lieutenants hold Union meetings in Hartford, Huntingdon and Frogtown at which they have speeches made misrepresenting the purpose of the proposed attack as in retaliation for supposed outrages committed by the imaginary Colorado gunmen guards.[38]

---

[36]Holloman, 1010.

[37]See rejected offers pp 1831-1900.

[38]For details as to the Union preparations for the Battle and their warnings to their friends, see Womack, 1060-1; Cole, 1369-70; Meeks, 1319-21-27-28; Weston, 729; Dougherty, 579, 589; Cheek, 424; J. Shaleen, 1381; Bly, 1198-9; Upton, 1202-3; M. Weston, Jr., 854.

For further details as to the Battle of July 17th see the testimony of the following witnesses:—E. Dougherty, 580; A. Dougherty, 597; Allison, 1375; S. Thomas, 927; Parrish, 905; Schell, 830; Levi Brown, 615; Mrs. Perry, 802; E. Thomas, 550; M. Douthitt, 891; McNamara, 956-7.

As to the murders of Baskins and Sylsberry:—S. Thomas, 930; M. Douthitt, 891; E. Douthitt, 900; McNamara, 956-7.

McNamara testified that Holt showed him cancelled checks and told him that they represented money spent to get Bache's witnesses out of the country (957).

Slankard and Local Secretary Cluck shoot up the local village of Frogtown in order to bring on and to justify the proposed attack.[39] **1914 July 12**

Cluck writes to the Journal describing this as the work of plaintiffs' armed guards, which letter the Journal publishes (982). **July 15**

District Board Member McLachlan telephones Judge Youmans and learns of the withdrawal of the Federal Marshalls.[40] **July 16**

Union forces assemble under McNamara's direction.[41] **July 16-17**

Plaintiffs load their first cars of open shop coal for shipment. Seven loaded cars on Midland Valley tracks leading only to interstate points.[42] **July 16**

Battle of July 17. **July 17**

Some 2000-3000 Union men, armed with rifles and shot guns, attack plaintiffs' property, drive off and assault the men, murder two of them in cold blood and destroy everything possible.[43]

Damage to physical property $353.000.

Additional damage from forfeiture of leases because of insolvency of plaintiffs by reason of the destruction of their property, $517,000, total damage $870,000.[44]

Seven loaded cars, intact when plaintiffs' last employee left the property, subsequently set fire to by defendants by at least three independent ignitions.[45]

Capture by defendants of 12 Tennessee employees and their removal to Union headquarters at Hartford.[46]

---

[39] 955, 974-8, 981, 734, 735, 736, 876-7.
[40] 737, 955-956, 2146.
[41] 955, 736-8. See also 1449.
[42] See note 38.
[43] See note 38.
[44] 1931-2, 1935-6, 1937-9, 2228-9. No testimony was offered by defendants to contradict this.
[45] See note 40.
[46] See 590, 601-4, 809, 553, 559-560, etc.

1914 July 18 Tennessee people sent to their homes, their railroad fares paid by the Union.[47]

July 21 The other Southwest Operators sign two-year contract with District 21. McNamara and Slankard shipped out of the country by Stewart and Covington (959-961).

July 23 Publication in Official Journal by National Executive Board of Editorial "The Truth about Hartford" approving the Union attack and justifying it solely by reason of the alleged aggressions of the gun men guards (1041).

July 25 Mr. Bache appointed receiver of the companies (1454).

July 27 Judge Youmans receives letter from Union men threatening his life.[48]

July 30 Publication of the Article "Bravo Arkansas Coal Diggers" (1043).

Aug. 19-25 Contempt proceedings re-opened. Stewart and others sentenced to jail terms.

Aug. 7-January 1915 Publication in Journal of other Articles designed to justify the attack as one of the countryside in defense of their homes.

Oct. 28 Renewed attempt to operate a drift mine. Employees again driven off by defendants.[49]

Sept. 4 This suit started.

November Four troops of cavalry arrive. Boycotts and intimidations continue.[50]

Jany. 1915 Plaintiffs' leases forfeited for insolvency.[51]

Jany. 20 On their own pleas of guilty, Stewart, Holt, McNamara, Slankard and several other Union men convicted in Federal Court of conspiracy to violate a law of the

[47] See note 46.
[48] 738, 739, 740.
[49] 880, 1232, 1381, 1235, 1155, 1454.
[50] 849, 1454-5, 1159-1160, 1382, 1235, 924.
[51] 1455, 1509, 1937-9, Decrees of Cancellation. 1767, 1771.

United States. McNamara sentenced to two years in the penitentiary. Holt and Stewart merely fined; others get short jail sentences;[52] District Organization pays all expenses and fines.[53] **1915**

Demurrer to complaint sustained by Judge Youmans. **1915**

McNamara comes out of penitentiary and finds himself unjustly accused of the murders. Meets National President White and demands the agreed compensation and is refused. **Spring 1916**

White expresses approval of all that had been done except the two murders, which he disapproves because liable to turn public opinion against the Union (962-3).

Judge Youmans' judgment reversed and case remanded for trial. **July 1916**

Third Amended Complaint filed. **Feby. 1917**

First trial—Judgment for plaintiffs for $625,000. **Oct. 1917**

Judgment sustained by Circuit Court of Appeals. **May 1919**

Judgment reversed by this Court and case remanded. **June 1922**

Second trial—Binding instructions for defendants. **October 1923**

Judgment affirmed by Circuit Court of Appeals. **July 1924**

[52] 1578-1585.

[53] This suit was then pending against both the National and District Organizations. Plaintiffs then had no evidence to implicate the National, but the District had been caught red-handed. Naturally the bills were paid with the checks of District 21.